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The Law of Hammurabi and Moses



TRANSLATED FROM
THE GERMAN OF
H. GRIMME

BY

W. T. PILTER

UC-NRLF



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**THE LAW OF HAMMURABI AND
MOSES**

THE LAW OF HAMMURABI AND MOSES

A SKETCH

TRANSLATED FROM THE GERMAN OF
HUBERT GRIMME

Professor of the Semitic Languages in the University of Freiburg, Switzerland

TOGETHER WITH
A TRANSLATION FROM THE BABYLONIAN OF THE LAWS
DISCUSSED, AND CHAPTERS ON
THE HISTORY AND ARCHÆOLOGY OF THE
HAMMURABI AND MOSAIC CODES

BY THE
REV. W. T. PILTER

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LONDON
SOCIETY FOR PROMOTING CHRISTIAN KNOWLEDGE
NORTHUMBERLAND AVENUE, W.C.

1907

[PUBLISHED UNDER THE DIRECTION OF THE TRACT COMMITTEE]

HISTORY I.

THE HISTORY OF THE
UNITED STATES OF AMERICA
FROM 1789 TO 1889
BY
JAMES H. SMITH
VOLUME I.

PREFACE

THIS book consists of two parts: first, a translation of a *brochure* by Professor Hubert Grimme, to which I append a version from the Babylonian of such of the laws of Hammurabi's Code as he discusses in detail; and, secondly, of a series of chapters by myself.

Hammurabi's *stela* is, and must remain, a conspicuous landmark in the historical and legal study of the Old Testament, but, so far as I am aware, no writer except Professor Grimme has appeared to discuss this great monument of the Abrahamic age in a manner at all satisfactory to students who believe the Old Testament to be authentic and historically true. For such persons, and, indeed, for all earnest-minded inquirers, this sketch of his appears to me likely to be very helpful, a contribution of value to the understanding both of Hammurabi's and the Mosaic Codes, and also of the relationship, or otherwise, between them. Hence this translation of Professor Grimme's sketch.

But for many English readers further information appeared to be required, and some points to call for

development and for illustration from the ancient inscribed monuments ; hence the second part of this volume, which may serve as a succinct, practical introduction to the archæology of the Pentateuch from the period of Abraham. In its pages I have sought to set forth briefly the history of the Hammurabi period in Babylonia and how it affected the patriarchs of Israel ; the state of culture which surrounded the Hebrews from the days of Abraham to Moses ; the history of Hammurabi's Code in later Babylonia, and its influence, or otherwise, upon the laws of Israel ; and how the political and legal, the geographical and historical conditions, and the institutions, both legal and ceremonial, of the times, as brought before us by contemporary monuments, are faithfully reflected in the pages of the Pentateuch. My contribution closes with two further chapters—one of them applying Professor Grimme's method to a subject of Pentateuchal law which lies outside the special sections he discusses, and the other illustrating—by an incident which was fresh in the minds of the people of Galilee and South Syria at the time of my sojourn there, now some years ago—what would be the practical working of a section of Hammurabi's Code.

In submitting the archæological evidence, I have not only sought to give the facts as faithfully as possible, but also I have added quotations or references to the sources, so that even the non-expert student may be in a better position to appraise the statements made

in this book and by other writers on the subjects discussed. As henceforth it would seem scarcely likely that any critical introduction to the Old Testament or commentary on any book of the Pentateuch can fail to refer to Hammurabi's *stela* and other monuments herein considered, it is hoped that this little work supplies such information as will be of real use to clergymen and other public teachers and to working students.

I have to thank Professor Grimme for kindly permitting his *brochure* to appear in its present form. For my translation he has revised his original throughout, added the whole of the passage on the ancient Arabian inscriptions (a subject in which he is known to be specially interested), and a new Foreword. He is in no way responsible for any additions of my own, which are always definitely marked off from his work by, at least, square brackets [], usually followed by the contracted word TRANS. For the Table of Contents here given, the division into chapters, the chapter-headings and Index, I am also responsible.

The quotations from the Bible are given, usually, from the Revised Version.

W. T. PILTER.

WELBECK LODGE,
NORTH FINCHLEY,
1st February, 1907,

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(Being the following sections of the Code : 1, 2, 6, 7, 8, 14, 21, 24, 57, 63, 117, 125, 195, 196, 197, 199, 200, 206, 207, 209, 211, 213, 250, 251, 252, 263, 266, 267, and 280)	132
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PART I
THE LAW OF HAMMURABI AND MOSES
BY DR. HUBERT GRIMME

2

FOREWORD TO THE ENGLISH EDITION

THE following sketch was written and sent into the world three years ago under the fresh impression produced by the first publication of the Code of Hammurabi. Since then Hammurabi research has made not insignificant progress whereby, specially, the peculiarity of Babylonian law, its terminology and form of expression, and, in particular, its administration, have been brought into clearer light. But that which was most important in the drawing up of our sketch was to define the relation in which the Hammurabi law stands to the Mosaic; this point is still a matter of lively discussion. Nevertheless, nothing has yet been brought to light which can disprove the propositions which we have advanced, and, therefore, we continue to hold fast, with all firmness, the conclusion that Hammurabi, as well as Moses, must have drawn out of the well of Old Semitic common law; of course, each in a different

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way. This opinion would still remain valid if at any time more thorough investigation should yield as a result that in Arabian antiquity civil law found expression in forms similar to those of Hammurabi and Moses.

HUBERT GRIMME.

March, 1906.

CHAPTER I

INTRODUCTORY

Hammurabi's records and personality—The *stela* inscribed with his laws—The bas-relief sculptured upon it.

THE Babylonian ruler named Hammurabi has long been known to Assyriologists. He was the sixth in the series of the First Dynasty of Babylon, which was a Semitic dynasty, and he ruled fifty-five or, according to another source, forty-three years. The date of his reign cannot yet be determined with certainty, but it may be placed before B.C. 2100.

Hitherto our only records of Hammurabi's activity as a ruler have been a short chronological tablet,* about a dozen minor inscribed monuments, and a series of fifty-five letters of the king to Sin-iddinam, his vassal or field-marshal.† From these we may

* [This valuable tablet, compiled in the reign of Ammizaduga, the fourth King of Babylonia in succession to Hammurabi, is in the British Museum (Bu. 9-5-9, 284), and is published in Part VI. (plates 10 and 11) of the official *Cuneiform Texts*, etc. A translation is given by Prof. Sayce, in the *Proceedings* of the Society of Biblical Archaeology, January, 1899; Mr. King has published the text, transliteration and translation in vols. ii. and iii. of his *Letters*, etc., mentioned in the following note.—TRANS.]

† [These letters and other monuments of Hammurabi, with additional remains of the period, have been published in cuneiform text, transliteration of the same into Roman letters, and (in the third volume) an English translation by Mr. Leonard W.

gather that he was conqueror in battle with the Elamites, the ruler of a powerful Semitic kingdom which he knit together in Babylonia, as head of which he bore the titles "King of Babylon, King of Sumer and Accad, King of the Four Quarters;" they also show him to have been a great builder, who dedicated his powers to the erection of temples, making canals, and other peaceful undertakings; they depict him as an administrator who had in his own hands the threads of all the affairs, great and small, of the public business of Babylonia. Moreover, we possess a hymn * in which he is addressed in an unmistakable manner as a god, or at least as a mediator between the gods and men. Nevertheless, in spite of all these deeds and attributes, he did not appear to have much advantage over other great men of Babylonian and Assyrian history.

For the Bible student Hammurabi has awakened a greater interest than all the kings of the older Babylonian epoch because his name appears, perhaps, in the Bible (Gen. xiv. 1) under the form "Amraphel;" he is thus one of the four kings of the East who, on the occasion of a warlike expedition against Southern Palestine, was successfully attacked by Abraham.

The Hammurabi of Assyriology, however, has in the last year or two become a Hammurabi of universal history, and has even entered the list of the leading names of antiquity. This change has been brought about by the decipherment of a column set

King, of the British Museum, under the title, *The Letters and Inscriptions of Hammurabi*, in three volumes (London, 1898-1900).—TRANS.]

* [This hymn, which is carved on a broken statue of black basalt now in the British Museum, is given, in text, transliteration, and translation, in Mr. King's *Letters*, etc., referred to in the preceding note.—TRANS.]

up by him and discovered towards the end of the year 1901 by the French expedition investigating the ruins of Susa, once the capital of ancient Elam and later that of Persia.

For the prompt publication of the text of this column we have to thank the acute decipherer, the Dominican father, Vincent Scheil, who published and translated it in the fourth volume of the *Mémoires* of the Persian delegation.* Upon that work rests, substantially, all that has since appeared upon Hammurabi's Code, whether as translation or interpretation, by German, English, and French scholars.

The Hammurabi *stela* or column consists of a block of diorite 2.25 metres [7 feet 4½ inches] in height and more than 1.50 metres [4 feet 11 inches] in circumference; on its upper end is a large carving in relief; under that, as well as on the back of the *stela*, there is a long text written in the Old Babylonian wedge-writing.

The relief represents King Hammurabi standing before the Babylonian sun-god (Shamash). Professor Scheil has started the theory, which hitherto has been generally accepted, that the gestures of the two figures indicate that the god Shamash dictated the legal code to King Hammurabi, a procedure which would lead us to look upon the law and religion of Babylon as having an inner unity, and it has also been described as a counterpart of the scene of the giving of the Law on Mount Sinai. But the representation carved in no way signifies all this. For first of all, the inscription itself does not set before us Shamash as being he

* [Paris, 1902. This expedition was sent out by the French Government, and the several volumes of *Mémoires* are the official publications recording the results of the labours of the delegation. Mons. V. Scheil is also professor at l'École pratique des Hautes-Études.—TRANS.]

to whom Hammurabi owed his law. If emphasis is to be laid upon the words of the epilogue (*Verso*, Col. xxiv. 84, ff.), "At the command of Shamash, the great judge of heaven and earth, may justice go forth in the land," it must also be noticed that in the prologue (*Recto*, Col. v. 14, ff.) Merodach, who is also named "the god of law" (*Recto*, Col. i. 11), is signified as he who had sent Hammurabi to cause the land to share in the protection of law, and that another place, and in the epilogue (*Verso*, Col. xxv. 25, ff.), speaks of Hammurabi as having procured respect for the word of Merodach. Now, if we must refer these forms of expression to the proclaiming of the law in question, the relief would indicate less than what the inscription itself says, or even something quite different from it. King Hammurabi is pictured lifting up the right hand to heaven, but this gesture is nothing else than an illustration of the customary Babylonian expression *nish gati* ("lifting up of the hand"), *i.e.* prayer; whence the custom, which is preserved to our own day, of lifting up one hand in taking oaths. While as to the attitude of Shamash, it is only that of a god enthroned in dignity, who bears firmly in his right hand the emblems of his power, namely, a sceptre (or ? *stilus*) and ring.*

* It is the exact reproduction of the representation found in the *cella* of the temple of Sippar [in North Babylonia or Akkad]. Friedrich Delitzsch, in his *Babel und Bibel*, i. pp. 48, 49, gives illustrations of this god which correspond most exactly in expression and mien to the Shamash of the Hammurabi *stela*. He also gives, on page 9, a picture of Hammurabi, who is there unaccompanied by Shamash, in exactly the same praying attitude as in the relief on the *stela* of laws. It is the more incomprehensible, therefore, that Delitzsch (in *Babel und Bibel*, ii. p. 26) should represent the relief on the *stela* as valid evidence that Hammurabi claimed to give to his people Divine law, which

Since the Hammurabi column—as we gather from a concluding remark of the inscription—came from the temple of Shamash at Sippar, so the representation of the king praying before Shamash may have been chosen in honour of the lord of that temple. Another example of this *stela*, which, according to the epilogue, must have stood in the temple of Merodach in Babylon opposite to a statue of Hammurabi, will, presumably, have shown the king in prayer before the god Merodach.

had been revealed to him by Shamash. [The original of the carved slab from the temple of Sippar is to be dated about B.C. 870 (though, perhaps, copied from one of much older date), and may be seen in the Babylonian and Assyrian Room of the British Museum, Table Case C; it is shown on Plate XXII. of the official *Guide* (1900). The same attitude of persons in the presence of one of the gods is by no means rare on the Babylonian antiquities. It is found, *e.g.*, in the room in the British Museum just referred to, in Wall Case No. 72, where the figure is also supposed to be that of Hammurabi; also in the “Babylonian *stela*,” in case 101, where the “astronomical emblems” on the top of the right hand of the monument are the same as on the tablet from Sippar; also in the important ancient cylinder seal of the reign of Ur-Gur, King of Ur, some three centuries or so before Hammurabi’s time, in the presence of Sin (the moon-god)—this green schist seal is to be seen in Case D, and is figured on Plate XXIII. of the official *Guide*. Again, in the same case, No. 123, in the black stone seal of Amēl-Nannar before the moon-god; in No. 115, a red stone seal, showing the god Asshur above a sacred tree, with two Assyrian kings worshipping in this attitude, and Divine attendants; in No. 108, a similar seal of one Ili-tabni; and in No. 68, a seal of dark green schist, which shows the worship of Shamash, who is seated on a throne and “from whose body rays of light ascend.” That Hammurabi, in the scene sculptured at the head of his law *stela*, is represented merely as a worshipper before the sun-god (Shamash), as Prof. Grimme contends, and *not*, as Prof. Scheil first suggested, as receiving the Code of Laws from that god’s hand, is thus abundantly evident, as well as from further considerations, which are stated below (p. 37).—TRANS.]

CHAPTER II

THE INSCRIPTION ON THE COLUMN

Extent and condition of the text—A legislative testament of Hammurabi's old age—Its significance for us—The Code a comparatively late development of Babylonian civilization—It is thus analogous to the Babylonian language of the same period—Hammurabi's legislation, therefore, by no means represents primitive Semitic legislation.

THE cuneiform text which covers the greater part of the pillar claims the chief interest. There are sixteen columns of 65-75 lines each on the front, and twenty-eight columns, each of 95-100 short lines, on the back of it, and these turned into our script make up a not insignificant volume.

The text has been handed down to us almost uninjured, except that five columns on the obverse have been completely chiselled away. This remarkable erasure is probably to be attributed to an Elamite king named Shutruk-Nachunte,* who carried off divers trophies from Babylon to his own capital, and there furnished them with an inscription or post-script referring to himself. Our *stela* would be treated in the same way, and to that end part of the surface

* [Shutruk-Nachunte was King of Elam about B.C. 1100. In tome iv. (which contains the text, etc., of the Hammurabi *stela*), and in other volumes of the *Mémoires de la Délégation en Perse*, the literary part of some of the trophies here referred to is published.—TRANS.]

The Inscription on the Column 25

of it was made smooth, that it might afterwards be inscribed. How it was that a new inscription was not cut upon it we have now no means of discovering.

The text gives us first of all a long introduction, in which Hammurabi enumerates his deeds of war and peace. The picture here given is far more comprehensive than that brought before us in his earlier documents, and shows us an hitherto undreamt-of extension of his kingdom of Babylon, which reached from the boundaries of Elam northwards to beyond Assyria and Nineveh. The emphasis laid upon his care for his subjects strikes us as showing a specially sympathetic feature in Hammurabi's character. He calls himself a "shepherd" of his people, and that more is meant by that than a mere form of words is indicated to us by the fact that the greater part of the inscription—some two hundred and eighty-two paragraphs*—is a code of civil and criminal law. In this legislative testament of Hammurabi to his successors, I see a work of his old age, as may be deduced from the great number of his deeds mentioned in the prologue. His epilogue teaches us that he intended that this testament should be of force for the future, the directions of which say, among other things, "The king who is in the land shall observe the words of the law which I have written on my stone monument, he shall regard the law of the land which I have given, and shall not alter the decisions which I have enacted." Without doubt, his intention has been accomplished; his law remained the standard law for the Babylonian and afterwards

* [This estimate includes the parts of the Code erased from the monument, which amounted, according to Prof. Scheil's reckoning, to thirty-five paragraphs. But see the note, p. 132. —TRANS.]

for the Assyrian kingdom; for not only is his motto-like, fundamental idea that the strong should not injure the weak repeated by later rulers, as, *e.g.* by Sargon and by Assurbanipal of Assyria, but there have also been found, both in the library of the Assyrian king Assurbanipal and in the ruins of Babylon, fragments of laws * which are now seen to be part of Hammurabi's legislation.

The value of Hammurabi's Code for us is, firstly, that it helps to fill up a great gap in our knowledge of the ancient East, namely, the lack of a prescribed standard of law for the great states of Nearer Asia, and, further, that it represents to us by far the oldest *written* document in the development of human legislation; one which anticipates the Law of Moses by 600 years, that of Manu by 1000 years, and that of Gortyna [in Crete] by 1600 years, and thus merits the right of being taken into consideration in all questions relating to the development of human law. Nevertheless, we must at the outset firmly confront the exaggerated expectations with which, perhaps, many greet the Code of Hammurabi.

The beginnings of civilization in Babylonia are lost in the most hoary antiquity. Non-Semitic in origin, it was adopted and developed—perhaps about B.C. 4000—by Semitic immigrants. The age of Hammurabi could already enjoy the ripe fruits of this doubly rooted culture, and the Code of Hammurabi is certainly in part a very late collection of legal decisions which had been arrived at long before.† Although, therefore, its relative age may at

* [See my discussion of these, pp. 102, 103 below.—TRANS.]

† In the volume of his *Mémoires* which contains Hammurabi's laws, Prof. V. Scheil has published an inscription of

The Inscription on the Column 27

first impress us, yet its absolute antiquity is by no means guaranteed. Highly developed culture is always a forcing-house for ideas ; by it that which in primitive circumstances had remained a long time in the germ is often brought to ripeness, or even over-ripeness, with giant strides. The Babylonian development of language shows similar features to the Babylonian development of language which, in more than one point, had already, in the third millenium before Christ, more thoroughly used up and worn away its sounds than many other Semitic dialects which only came to literary blossom thousands of years later, as, for instance, the North Arabic, Ethiopic, and even the Amharic of our own times. Such legal institutions as maintain the Old Semitic standpoint to this day in the Arabian desert, a few miles south of Babylon, in Babylon itself four thousand years earlier had been drawn into the stream of culture, had lost their primitiveness, and received as compensation a practically modified form which accommodated itself to many new conditions. Thus we can immediately, from the progress of Babylonian culture, without further proof, draw the conclusion that Hammurabi's Code neither represents to us primitive Semitic legislation nor greatly enlarges our knowledge of the pre-historic times of law.

the priest-king of Susa, Karibu-sha-Shushinak, which, to judge from the writing, is at least as old as that Code. This ruler also, like Hammurabi, asserts of himself that he "exercised just judgment in his city ;" and he invokes the curse of all the gods upon every one "who causes any one to transgress his law."

CHAPTER III

THE CODE AND ITS SCOPE

Summary of the contents of the Code—These show that it was not a system of law, but a collection of laws—The four social classes of ancient Babylonia—Kinship and family the most important unit—The economic circumstances of Babylonia at the time of the Code—Hammurabi claims both the laws and the promulgation of them as his own, and not his gods'.

WE turn now to the contents of the Code before us. A short enumeration of the legal matters dealt with may give us an idea of its comprehensiveness; they are partly criminal, partly civil cases, and are decided in the following order: The criminality of ban and witchcraft when employed to the injury of another (§§ 1, 2); the law as to the calumny of legal witnesses (§§ 3, 4); as to the perfidious sentences of judges (§ 5); appropriation of the property of others (§§ 6-14); escape and kidnapping of slaves (§ 15-20); robbery (§§ 21-25); feudal relations to the king (§§ 26-41); relations between owner of land and cultivator (§§ 42-52); responsibility with reference to the bursting of dams and inundations (§§ 53-56); shepherds and pasturing (§§ 57, 58); owners and cultivators of gardens (§§ 59-65). Here follows the blank space in which there is room for about thirty-five paragraphs, some of which certainly treated of

the hiring of houses. [The inscription is now continued on the obverse of the *stela*.] It treats of relations between business men, apparently merchant and retailer or middleman (§§ 100-107); of inn-keeping (§§ 108-111); appropriation of consignments (§ 112); prosecution for debt (§§ 113-119); deposit of corn and objects of value (§§ 120-126); insulting a woman either dedicated to a god or a lawful wife (§ 127); marriage laws, particularly matrimonial property law as well as conditions of re-marriage (§§ 128-167); repudiation of children (§§ 168, 169); position of children by different wives, and of widows, with respect to inheritance (§§ 170-174); marriage between free persons and bond-slaves (§§ 175, 176); provisions as to the re-marriage of a widow having young children (§ 177); position of a female descendant (especially of a non-marriageable temple virgin, of temple and street girls) with respect to the paternal estate (§§ 178-184); foster-children and adoption (§§ 185-193); obligations of wet-nurses (§ 194); legal consequences of causing bodily injuries (§§ 195-214); fees of the higher order of doctors and penalties to which they were liable (§§ 215-223); the same, with regard to doctors of an inferior order (§§ 224-227); charges payable to house-builders, and penalties to which they were liable (§§ 228-233); ditto with regard to ship-builders (§§ 234, 235); of owners, hirers, and the manning of ships (§§ 236-239); of collisions between ships (§ 240); the requisition and hiring of domestic animals (§§ 241-249); of bodily injury by goring oxen (§§ 250-252); hiring transactions in field labour (§§ 253-258); recompense for implements of husbandry stolen (§§ 259, 260); rights and duties of herdmen (§§ 261-267); hire of beasts for threshing

(§§ 268-270); hire of ox-waggon (§§ 271, 272); labour tariff for labourers and artisans (§§ 273, 274); tariff for hire of ships (§§ 275-277); of the slave-trade (§§ 278-281); punishment of rebellious slaves (§ 282).

In this multitude of cases we miss the leading thread, so that the whole presents itself to the mind more as a collection of laws than as a system of law. In order to penetrate into the spirit of the Code it appears necessary to form an idea of the social and economic modes of life which lay at the basis of it and conditioned its environment.

The social organization of Babylon is shown by the Code to consist of four classes: (1) the king, with the court and priests; (2) the emancipated; (3) ordinary freemen; (4) slaves.

(1) We seek fruitlessly in Hammurabi's legislation for laws governing the first of these classes, chiefly because the king, as source of the law, stands high above it; in relation to him, every one else is nothing more than a slave (§ 129). It is true Hammurabi glorifies himself as a good king, at once the shepherd and father of his people, in that "he speaks the law of the land," "makes known the decree of the land," "procures the well-being of the country, and suffers not the causer of disquiet;" but he is yet more. As "divine king of the city" (*ilu shar alī*), he joins himself to the gods of the land, and with them receives the adoration of his subjects. The hymn to Hammurabi mentioned above (p. 20) thus corresponds to what he here says of himself. About the king, as universal prince, the court (*ēkal*) arranges itself; while, as a spiritual power, he stands in close connection with the priestly class. Of the legal relations of both these groups, the Code before us makes no mention, so that it is presumed that in the Babylonian culture there

was, together with this citizens' law-book, a further one for the nobility and priesthood. Our Code contains legal decisions only for certain groups connected with the court and priesthood and those not connected by birth, such as court paramours or courtesans (§ 187), court slaves (§ 175), also women devoted to the gods (§ 182), as well as those not in a convent (§ 110), temple virgins and temple prostitutes (§ 181).

(2) The Mārbanū are those whom we may designate the second class; these Professor Scheil supposes to be the nobility, Dr. H. Winckler and others, with more probability, the freed men of the court (and in its service). They appear to have stood in close relation to the court (§ 8), which might be due to the king having become, on their emancipation, their protector. If when they suffered bodily injury the offender had to pay them money compensation instead of receiving retaliatory punishment, this need not be taken as evidence that their position was inferior to that of the free classes, for at the root of this exceptional law may be the idea that the treasury of the king should draw profit from the private affairs of his *protégés*.

(3) Without special privileges and strictly restrained by legal obligations was the great class of ordinary freemen or citizens (*amelu*, fem. *ameltu*). The Code brings them before us a comparatively compact mass; nevertheless, there are evidences that it was composed, in more ancient days, of several smaller organizations, as, e.g., the union of townsmen (*alu*), with the high official (*Rabianu*) * at its head—this was probably of

* The correspondence of Hammurabi and Sin-iddinam mentions Rabianus of the several cities. This office appears to have become obsolete not long after their time.

Old Semitic origin ; there was also the union of those who dwelt in the same district (*piḥatu*, § 256). Among the hand-workers (*mār ummia*)—except perhaps artists, who, however, under Oriental conditions ranked with the artisans—there were guilds.

The most important of all social combinations appears, in Hammurabi, to have been that of kinship and family. It is not, it is true, very evident how far blood relationship or marriage affinity extended, and as a consequence—so it seems to us—of life in large towns, the value of a far-ramified relationship is not more prominently brought forward ; but so much the more conspicuous does Hammurabi's smaller unit of the family stand out before us. In this the father plays the ruling part, the mother a more subordinate part, but not one of subjection. Every man who married made a house for himself ; every girl who was married lost that of her father, and could only win it again in exceptional cases. Marriage took place by agreement between the husband and the father-in-law. Matrimony in Babylonia, it is manifest, had grown out of a form of wife-purchase, for the father-in-law set over against a marriage portion (*tirḥatu*) paid to him the dowry (*sheriqtu*) of his daughter ; perhaps even he gave to her the marriage portion at her marriage (§ 138). Settlements, presumably in the form of first-morning gifts (*nudunnu*) of the newly married husband to his bride, are by no means rare.

Babylonian marriage was essentially monogamic in character, because a man could be the husband of only one wife (*ashshatu*, also *hīrtu* or *rabitu*). If, however, his wife bore him no offspring, he might along with her have a secondary wife (*shugētu*) ; but besides the *shugētu* who bore the children, no second was allowed him (§ 144). The subordinate wife never

attained the position and full rights of an *ashshatu* (§§ 145-147); on the other hand, her children were always legitimate. If a married man begat children by a female slave (*amtu*), these might be made legitimate; on the other hand, legitimate children who committed wrong against their parents were disinherited.

The man's honour was the palladium of the family. If he brought dishonour on himself, *e.g.* if he fled the country (§ 136), or if he led a dissolute life (§ 142), the wife had a right to a separation. If the honour of a man was assailed by the suspected conduct of the wife, she had to purge herself by the judgment of God (ordeal by water [§ 132]). Further, incest deprived the guilty party of honour, and drew upon him, in some cases, exclusion from the family; in others, the forfeiture of goods or life [§§ 154-158]. Lastly, it would appear that all cases of dissolution of marriage by the husband were judged from the point of view of injury to his honour, as, *e.g.*, was that specially frequent cause of separation, childlessness (§ 138).

(4) Those not free, or slaves (*ardu*, fem. *amtu*), form the lowest class. It was of diverse origin. The idea of (*w*)*ardu*, *i.e.* "to be reduced," seems to show that many became slaves in consequence of being outlawed or oppressed freemen; the idea of *amtu*, which in Semitic elsewhere signifies concubine, shows plainly that the growth of the class of women slaves came about in a different way from that of men. With Hammurabi slaves of the State are distinct from slaves of the emancipated and those of free persons; both the first-named classes must have been more held in esteem than the third class, for their marriage with free women appears to have been not uncommon (§§ 175, 176).

The laws of Hammurabi inform us of the economical conditions of his country in a comprehensive manner, so that many separate features, which have previously become known from contracts of his own and of a later time, now appear in a fuller and more complete form. The prosperity of Babylonia depended, in a large measure, upon the very thorough cultivation of the soil, and this was only possible as long as the canal system—which dated from primitive times—was regularly kept in order. Hence the great significance of the penalties prescribed by Hammurabi (§§ 53–56) for neglect of the dams. But though the land was so thoroughly cultivated that little mention is made of waste lands, yet very different persons had a share in the different properties. The king himself owned a large part of the land; another part was the property of the freemen. Nothing is said in the Code—perhaps the omission is accidental—of the landed property of the temples. The ground belonging to the king was partly assigned on feudal tenure (*ilku*) to officials, for example soldiers (*redu*), for emolument, and partly farmed out for a fixed rent (*biltu*). Other lands belonged to the freemen of the city or of the plain. There are numerous indications, however, that the land was greatly in the power of the cities, so that frequently the owners were not the cultivators. The property was farmed out to others, either for a fixed rent (§ 45) or for a certain part of the produce (§ 46), and the first tenant not infrequently handed over the field to a sub-tenant. The working expenses, which were connected in a special way with the widely ramifying system of sub-letting, were often met by loans, evidently from money-lenders in the towns. Though under these conditions a peasant class was able to maintain itself, there had for a long time been no

room for an independent shepherd class, and such cattle as were kept belonged chiefly either to the king or to town people engaged in the enterprise, who hired out their animals or gave them over to keepers to pasture.

Though the wealth of the land was raised by the very thorough cultivation of the soil—by means of plough, water-wheel, and well-bucket—yet it found its way, for the most part, into the great towns. There were the great merchants (*damgar*), who had about them a multitude of middlemen or agents to whom they lent money or handed over merchandise for sale. The towns were the centre of a well-developed money business, whereby silver (*kaspu*) furnished the standard of value. Money, especially as capital bearing interest, played a most important part in business life. At the same time, payment could be made in produce, the relation of which to money was “according to the king’s tariff” (§ 51); in exceptional cases, for example in the settlement of a debt, objects of value had to be accepted in payment. The genius of town life is shown also by many other tokens. Thus, there were houses which were let for a yearly rent in money; but as the agreements were liable to be cancelled at any time, the hirer of a house cannot have been held in much esteem. Great storehouses existed (§ 120) wherein, for definite payment in corn, cereals were received for storage. Public-houses, which were carried on by women, show another side of town life; at the same time, as is supposed, they were used as *lupanaria* (§ 110). The workmen’s unions already mentioned* had certain grades: house and ship builders stood higher than the ordinary craftsman, such as mason,

* P. 32, above.

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potter, carpenter, tailor, veterinary-surgeon, and hence received their payment in the form of a fee (*qishtu*, §§ 228, 234), not in that of wages (*idu*) §§ 224, 274). But town civilization shows itself especially in the all-pervading custom or even obligation of putting into writing all business of public and private life. The drawing up of a written document (*duppu*, *kunukku*) played a definite part as well in courts of justice and judicial sentences as in money matters and commercial dealings, in wills, dowries, and similar transactions.

As we reflect on these separate features in their entirety, we recognize Babylonian society as an organism wherein the greatest activity and continual movement were conditions of its being. The pursuit of gain, a struggle for existence, such as is interwoven with the economics of modern civilization, constituted even then the chief factor in the life of most of the ancient Babylonians. We wonderingly ask ourselves whether that which floats before the eyes of many persons as their conception of Oriental life, namely, comfortable enjoyment or contemplative repose attained by fortunate circumstances—whether these were lacking to the contemporaries of Hammurabi. Along with material aims, were there not intellectual objects also which appeared worth seeking? The answer to such questions is not to be got from Hammurabi's laws. The people whose circumstances his Code was intended to regulate was only the great mass who saw in bodily labour or in business their appointed lot. As they had no participation in the laws made for the higher classes—the court, nobility, and priesthood—neither had they any share in the self-chosen, intellectual pursuits which seem natural among persons who, in the quietness of the temple and in the

shadow of the throne, are removed from the strain of daily toil. To obtain an insight into the two-fold nature of Babylonian life—the material and the intellectual—we must consult other sources than Hammurabi's laws.

After the above survey of the practical side of Hammurabi's legislation, an understanding of his object in giving the laws depends chiefly on a consideration of their general drift.

Hammurabi sets the conception of the law on a purely human basis. It is true he allows it to appear that abstract justice (*kēnātu*) rests with the gods, specially with Shamash, "the great judge of heaven and earth;" but after Shamash has handed over to him as a gift the knowledge of that justice (Reverse, Col. xxv. 97, f.), he feels himself to be joint-proprietor of it, as "king of law," and considers the decisions it pleased him to give as his own "precious, noble words" (Reverse, Cols. xxiv. 79 and xxv. 12-14, 99), as his private title to renown. The occasion of the proclaiming of the law, in like manner, was referred back to no supernatural impulse; it was the grace and solicitude of the king which had called the law into being, and as his "beneficent decree" (*ridu damgu*) was it delivered to his subjects.

CHAPTER IV

THE CHARACTER OF THE BABYLONIAN CODE

The tendency of Hammurabi's legislation—its two fundamental ideas were (1) the preservation of the class of common freemen; (2) the protection of property—It attached a high value to property, but a low value to human life; in this, as well as in the administration of the law, it was very different from the Old Semitic—The Code does not recognize any religious motive or sanction, nor that hereafter it might be improved.

As to the tendency of his laws, Hammurabi himself writes under them [Col. xl. lines 59, ff.] that they were given "that the strong hurt not the weak, that orphans and widows be safe." But even if the Code contains nothing which contradicts the declaration of the king that he was the guardian of such as were worst placed economically and socially, yet, taken as a whole, it in no way appears as a manifesto for the safeguarding of the humane interests. It is written not with the heart, but with the head. From many intimations it seems to follow that the lawgiver had in view, before all things, two distinct, fundamental ideas, namely, *care for the preservation of the class of common free citizens, and the protection of property.*

In the Hammurabi period, capital and business undertakings were being developed on an increasingly large scale. In order to enrich a few many had to

work their utmost, and, through the pernicious consequences of this system, they were in danger of being reduced by impoverishment to slavery. In order to prevent this, Hammurabi's law in such a way ordered the circumstances of every free man who worked, that it lay in his power either to acquire property or to retain it. Hence is to be explained the statutory rates of hiring and wages, perhaps also the comparatively rare occurrence of fines, and the taking account of *force majeure* in certain circumstances of debt. In order to give to the free-born woman a household position, in order to strengthen pecuniarily the family which she helped to found, a definite settlement was made to her on marriage. So as to make a numerous progeny of the free class, any child of the union of a free man with a female slave, or of a male slave of the court with a free woman, was reckoned to the free class, and adoption was made easy. The free person who had the misfortune to be obliged to give up himself or a member of his family to slavery, Hammurabi allowed to become free after the expiration of a few years. And for every woman who did not become married, in order to secure her a livelihood he provided for her employment; it might be in the service of a temple, or the business of a tavern or public woman—whose *rôle* was at that time looked upon as much less disreputable than it is now.

But with the principle of supporting the free class another is intermingled, that of making personal property secure. No goods hired out or deposited in the way prescribed by law could be forfeited; all dues must be punctually paid, except when *force majeure* interfered; stolen property found in the possession of another person was in all cases restored to its rightful owner (§ 9). Care was taken that

marriage portions and patrimonies should not come into unauthorized hands; hence, for example, the private property of a wife was not allowed to be partly merged with the property of her husband until she had borne children; so, too, a married person was not security for such debts of his or her partner as were contracted before marriage; and hence children, unless fully entitled, were excluded from the inheritance (§ 171).

The high value set upon all property gives the chief explanation of the extraordinary harshness with which theft and robbery were punished. In the Old Semitic law the greatest penalty assignable, that of death, for theft applied only to sacred or devoted property (Josh. vii.), but with Hammurabi it was the most common penalty for *every* form of theft or robbery [see §§ 6-10, also 21, 22, and 25]; * and the receiver was dealt with in the same way as the thief. If the thing was stolen from court, temple, or emancipated person of the court, then, as it would appear, the punishment of death could be commuted by an extremely large money fine (§ 8).

In striking contrast with the high value placed upon property is the small value placed upon the life of the individual. In the Code, grievous penalties are the order of the day. Its severity, it is true, scarcely went beyond that of a modern court-martial in such a case as where it prescribed the death penalty to a captain (*redu*) or constable (? *bāiru*) who did not personally obey a summons of the king and

* §§ 259 and 260 [which, as they occur in the midst of sections devoted not to theft, but to hiring] probably do not lay down that he who stole a water-wheel or a well-bucket should make amends for it by a money penalty, but that the hirer of these objects must, if they were stolen, pay a money indemnity to the owner.

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sent a substitute; but the Code allowed the same harshness to rule in civil law. That a thief was killed, that is, beheaded, has already been said; the same punishment befel the false accuser [in a case of lost property] (§ 11); and the accomplice or harbourer of an escaped slave (§§ 15, 16); the disorderly wife and the fraudulent female innkeeper were drowned (§§ 143, 108); the nun devoted to a god who entered a tavern was burned (§ 110); so also any one who in an outbreak of fire appropriated another's property (§ 25); any one malevolently causing a slave intended for sale to be branded was killed and buried (§ 227). The death penalty fell upon the unfaithful administrator of property if he could not make good the injury.

The small value placed upon human life in Hammurabi's Code is shown also by the range given to the idea of retaliation. The Old Semitic demand for the requital of the destruction of eye, tooth, or bone by the destruction of the same bodily member in the perpetrator, Hammurabi's law carried to a logical extreme so as, in a measure, to caricature it when, for example, he decreed that "If any one strike a free woman so that she has a miscarriage and dies, then his *daughter* shall be put to death" (§§ 209, 210); "If a prisoner (for debt) die from blows or ill-treatment, then the *master* of the prisoner shall bring the man of business [who caused the arrest] before the tribunal and, if the deceased was free born, they shall put to death the *son* of the man of business" (§ 116); "If a builder has built a house, but has not made it strong, and it consequently falls and causes the death of the owner, then the *builder* shall be put to death (§ 229); but if it cause the death of the owner's son, then the *son* of the builder shall be put to death"

(§ 230). Even the doctor may experience the operation of this enlarged *talis* idea, inasmuch as, according to Hammurabi's law, if an operation on the limbs or the eye of a freeman had failed, the doctor's fingers were to be cut off (§ 218).

It would little agree with the spirit of strict consistency and comprehensive uniformity, by which Hammurabi's laws are distinguished, if the Old Semitic administration of justice by the people, with its irregular and often unreliable execution, had retained any importance in his judicial system. But there are special reasons for concluding that Hammurabi, or a preceding epoch, had wrested from the people every title to their own administration of the law. It is true that we are nowhere told in plain words that the execution of justice rested with the king's officers, just as little as the contrary; nevertheless, the form of many of the penalties leads us to infer that the carrying out of them could not have been assigned to an administration of the law by the people. Penalties like impalement, burning, drowning, cutting out the tongue, plucking out the eyes, cutting off the breasts, and public scourging, presuppose trained executioners, such as are only to be found in the service of a centralized jurisdiction. Penalties which were not carried out officially appear to have been allowed only in certain offences of slaves (§ 282, perhaps also § 205).

We might go even further and affirm that the whole legal procedure took place in the king's name; once (§ 18) the palace is named as the place of judicial investigation, and an affair of such a family nature as the offence of a son Hammurabi likewise (§§ 168, 169) sent before the judges. Then we have to regard the examining magistrate, as well as the person

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entrusted with pronouncing sentence, as royal officials, subordinate again to a higher court, probably of the king himself (§ 5). Traces of popular jurisdiction are indicated in the Code only by the presence of (apparently) civilian assessors (*shibu*) in lawsuits.

Where the secular (? royal) apparatus of justice did not suffice to clear up doubtful cases, Hammurabi's Code referred them to the gods, to be settled by the judgment of God and oath. The judgment of God points merely to a form of ordeal by water, which is signified by the expression, not very clearly descriptive of its nature, "to plunge in the River-God" (or "Divine river," §§ 2 and 132); its object was to give to a person suspected of exercising sorcery to the common hurt, and to a slandered married woman, the means of clearing themselves. Much more usual appears to have been the oath which, to conclude from the different expressions, was spoken in divers forms; as, "to say before" (perhaps, "before a") "god" (§§ 9 and 281); "to lay a claim before the god" (§§ 23, 120, 126); "to bring before the god," on the part of the accuser (§§ 106, 107); "purging before the god" (§ 266) and "to utter prayer before the god" by the accused (§§ 20 and 131); and, lastly, the simple "swearing" (§§ 206, 207).

It appears to follow that Hammurabi made over to the Divine Power the last decisive sentence in doubtful or obscure cases because, as we said above, it is the Upholder of the idea of law; but with that ends the taking of the gods into consideration in the Code established by Hammurabi. Another closely related consequence Hammurabi purposely avoided, namely, to regard the gods as regarding faithfulness to the law and causing punishment to fall upon transgressors of it. As he regarded the law as his, that is, as a human

work, so he looked upon the infringement of it only as an insult to the king, and the execution of punishment as the king's vindication.

To Hammurabi there was no such thing as a continuous development of the law. He alludes neither to stages preceding his legislation, which in any case must be presupposed, nor did he expect it to be improved upon or supplemented in the future. That which he had traced out seemed to him perfect enough to remain "afterwards and for ever" in force. At all events, it was not in the name of eternal law, but in that of his own majesty, that he besought the richest blessings of the gods on such of his successors as adhered closely to his decisions, and upon the princes who should deny or change them he invoked every curse.

CHAPTER V

THE COURSE OF HAMMURABIAN LAW, AND THE SOURCES AND COURSE OF LEGISLATION AMONG THE HEBREWS

Widespread and lasting influence of Hammurabi's legislation,—but it was not universal—It affected the Patriarchs, but not the nation of Israel, which had its own specific law, whose ultimate roots were Old Semitic.

The Old Arabian temple worship—The Mosaic legislation.

LIKE every great intellectual achievement, Hammurabi's legislation penetrated a wide area ; in spite of frequent changes of the royal dynasty, it established itself in Babylonia and Assyria as the fixed standard of law, and it drew Babylonian culture in its train. As that culture moved chiefly from east to west, so, we may venture to suppose, the people of Mesopotamia, Semitic as well as non-Semitic, had a common share in the law, and that they all indeed would be affected by the literary life of Babylon. As the Mediterranean coast may be regarded as the extreme boundary of the influence of Hammurabi's Code, Canaan should have been within its sphere.

Nevertheless, it would be a mistake to allow no exceptions to this rule as to the influence assigned to Babylon ; one at least may already be proved, that is the Mosaic law.

The beginning of Israelite history, the time of the

Patriarchs, falls within the epoch of Babylon's greatest intellectual influence on the West. Hammurabi's contemporary, Abraham, was of Babylonian origin; his successors, Isaac and Jacob, who felt themselves to be strangers in Canaan, and therefore obtained for themselves wives from the east of the Euphrates, would certainly not have been unaffected by Hammurabi's laws. Different marked features of their history offer themselves as examples of this. For instance, when Sarah bore no children to Abraham, she herself gave to him her bondmaid Hagar as secondary wife; this is an illustration of §§ 144 and 146 of Hammurabi's Code; and the child of this slave was looked upon as legitimate, corresponding to the provision in § 146. Sarah remained along with Hagar, but as the chief wife, and when Hagar would exalt her position above that of Sarah she forfeited her consort right—a case for which Hammurabi prescribed sending back into slavery (§ 146). Sarah endeavoured to drive away Hagar, together with her son, "that the son of the bondmaid should not inherit with her son;" this Abraham looked upon as specially unjust, but only with respect to the son. Hammurabi also (§ 146) did not allow the child to suffer for the mother's presumption. In Isaac's married life, again, the influence of Hammurabi's law similarly appears. Rachel gave her maid Bilah, Leah her maid Zilpah, to Jacob to wife, in order to beget legitimate children by them. Further, Leah and Rachel felt bitterly that their father had employed for himself the marriage settlement which had been paid for them; * as if they

* [Gen. xxxi. 15: "He (their father) hath sold us and hath also quite devoured our money;" the marginal rendering of the last two words, in the Revised Version, is "the price paid for us."—TRANS.]

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had Hammurabi's law in mind, according to which (§ 138), presumably, the marriage settlement would be given by the father to the daughter along with the dowry. Adoption of a son, which was a characteristic Babylonian feature (§ 185), may have had its influence upon Jacob when he adopted the two sons born to Joseph in Egypt. And the Babylonian custom of putting every agreement into writing may perhaps be placed as a parallel to the expression frequently used in the Old Testament, "to make" (literally, to dig or cut) "a covenant" (*karat berit*).*

Thus there are not wanting important evidences which lead us to ascribe a strong Babylonian colouring, in customs and law, to the times of the Patriarchs.

But although the forerunners of the people of Israel came under the jurisdiction of Babylon, yet Israel itself, the stronger it became, the more it outgrew the guardianship of its great neighbour. The period of the sojourn in Egypt naturally caused every trace of Babylonian influence to be lost, and when the nation emerged from North Arabia to take possession of the rich plains and cities of Canaan; when too, in the midst of internal and external conflicts, it obtained political independence in the conquered districts, it preserved its own distinctive characteristics in their fulness and purity. The hankering after what was foreign, above all, the desire to imitate Babylonian ways, only entered into the heart of Israel when David's success in war and his political skill caused the idea of an absolute monarchy to recommend itself to the enfeebled tribes, and when Solomon

* [To appreciate the literal force of this remark, it should be remembered that a contract or binding agreement was written, in ancient Babylonia, on a clay tablet which, in its moist state, had the inscription "cut" or scratched into it by a *stylus*.—TRANS.]

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endeavoured, in a despotic spirit and without any regard to old popular rights, to develop the inheritance he had received from his father. When, moreover, David no longer felt himself to be merely leader of the army of Israel, but supreme commander; when he took into his hand the sovereign right of declaring the law, and, after the taking of Jerusalem, made claim to priestly dignity for himself and his sons; when Solomon appointed officers over the tribes of Israel, endeavoured as much as possible to bring into permanent connection with the court and army the more submissive popular elements, but burdened the less pliable with compulsory service; when he sacrificed the strength of the land to his love of building and passion for splendour,—both these kings, must certainly have had patterns before their eyes, and among them Babylonia and Assyria would not occupy the least important place.

Nevertheless, we ought not to overrate the extent and significance of this affectation of foreign customs which was at work within the Israelitish court. Though the varnish of Babylonian modes was laid thickly on all that might serve to represent royalty outwardly, it did not penetrate deeply into the soul of the people of Israel. Their deeper thoughts and feelings already found expression, before the time of the kings, in forms which were original to themselves and fundamentally opposed to intermixture with foreign innovations; above all, there floated before them an idea of law to which no Babylonian law paragraph could have offered any comparison. To trace this Israelitish law to its origin is, indeed, the most difficult but also the most important problem of the Old Testament.

Its ultimate roots extend, in any case, into the Old

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Semitic customary law with which the Israelites, before they entered Canaan, had become so deeply imbued that the effects of it never entirely departed from them, either in consequence of nearness to Canaanitish (query, Babylonian) law, which flourished in the Palestinian towns, or by their own later internal developments.

With the consideration of Old Semitic law we enter a region which, it is true, has been little studied and explored, yet which is by no means to be regarded as merely one of abstract idea and of presupposition of Semitic legal notions which cannot be further declared. That law could probably be recovered again, in reasonable purity, by a comparison of the legal customs made known to us partly by numerous contemporary wandering tribes of the Arabian peninsula, as well as by certain half-nomadic tribes of the Ethiopic community of peoples now living. Until that investigation is exhaustively carried out, there appears to me no single body of law which can raise a claim to the title of Old Semitic peculiarity such as can the law of the Abyssinian Bogos—a tribe found westward of Massowah and not yet arrived at the fully settled state. Their law Werner Munzinger, in his excellent book, *Ueber die Sitten und das Recht der Bogos*, called "a document of the old law of the Ethiopian people before the intrusion of the Amhara;" but to me, who see in Ethiopia the most original corner of the Semitic world which shows, more than Arabia, claim to the designation "primitive home of the Semites," that law appears to point immediately to the Old Semitic.

Of numerous details of the Law of Israel, in which, evidently, Old Semitic conceptions are still perceptible, we shall come to speak later on. They appear;

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however, only as blocks inserted into a greater and more noble building, and have thereby been preserved. The creative mind which has perpetuated itself in this building, and given to his people Israel an inheritance which outlasted their hereditary possession of the Land of Promise, was Moses : his work was the Torah Law.

Now, have we the right to speak of a *Mosaic* Law? Those who are under the spell of the Graf-Wellhausen investigations answer in the negative, because they are convinced that the Biblical law is not within the North Arabian sphere and does not fit into the time of the wanderings of the tribes of Israel, but that it breathes altogether the spirit of late Judæan times—the period of the decline of the kingdom, of the Exile, partially even of the after-Exilic period. But against this view the stones have begun to testify, the inscribed stones of ancient Arabia, which teach us that in the time that Israel sojourned in North Arabia that land is in no way to be considered as the domain of nomade barbarism, but, particularly with reference to religious worship, as the seat of an extraordinarily refined culture. From Hadramaut to Yemen, and further up to North-West Arabia, there were, according to the inscriptions, temples which were the centres of the ecclesiastical life of the state ; with which was bound up a great apparatus of superior and subordinate priests, of levites, bondmen, slaves, even “ friends of the gods ” and “ sons of gods ; ” along with these were arrangements for sacrifices in which blood was shed and sacrifices without blood, tithe tributes, pious institutions, vows, and dedications,—in short, a fulness of phenomena of religious worship resembling the Mosaic law, and indeed, specially, the “ Priestly Code,” that alleged piece of latest Biblical legislation.

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Accordingly, nothing more stands in the way of allowing the Biblical ceremonial laws to have originated there, where the Bible itself refers them, in the Mosaic period. But if we are justified in holding the ceremonial laws to be ancient, how much more the Biblical criminal and civil law decisions, which are evidently contrary to the spirit of civilized Canaan !

Yet the Biblical ceremonial law is certainly not a mere cast of Old Arabian temple laws ; its strong monotheistic colouring shows that, and places it in sharp antithesis to them. We are consequently compelled to postulate a lawgiver of Israel who may have partially made use of the temple arrangements of ancient Arabia, so as to utilize them as a foil for a new and high Divine service. Therewith, however, we come directly to the powerful figure of a Moses, as he is depicted in the Bible, who, as son-in-law of Jethro, the Midianite high priest, had had deep insight into the Old Arabian temple religion ; who, also, as the liberator of his people from the servitude of Egypt, as victorious leader of the host, and as supreme judge, was fitted, as none other before or after him, to make his designs, his experiences, and the Divine revelations which had been granted to him, into a law which should be binding upon Israel. That for this he may have made use of writing is, to conclude from the high position of education in North Arabia, more than probable.

With the Old Arabic inscriptions in the background, we believe ourselves justified in speaking of a *Mosaic* legislation.

But in saying this we do not assert that the Pentateuch, line for line, or every decision of the Law, is to be directly credited to Moses. The form and style of many sections indicate revision and subsequent

recasting; the Bible itself names Joshua and Samuel as making additions to the Law of God (Josh. xxiv. 26; 1 Sam. x. 25). At all events, the Ten Commandments (even in their duplicate form, Exod. xx. 1-17; xxxiv. 17-26, which perhaps allows us to conclude that there was a dualism—*i.e.* esoteric and exoteric members—of the Israelite community) further the so-called Book of the Covenant (Exod. xxi.-xxiii.), as also the great part of the Ceremonial and Moral Law of Leviticus and Numbers, might be allowed to breathe the Mosaic spirit; on the other hand, behind the Deuteronomic law (Deut. xii.-xxvi.) there stands out pretty clearly some one commenting on Moses, probably Samuel.* After Samuel the Mosaic Law, in all its more important parts, was probably closed, so that neither the sovereign greatness of a David nor the proverbial wisdom of Solomon left behind it any traces in the Law of Israel. More persecuted than adhered to by the later kings of Judah and Israel, and much forgotten by the people who adapted themselves to Canaanitish laws and customs, it survived, nevertheless, as a venerable witness of the past, the little triumphs and growing need of the Jewish nation, in order that, when all national life tottered before the Assyrian and Babylonian conquerors, it might become the firm pillar, leaning on which, after the loss of princes and freedom, the people gathered together spiritually and became a community of the Law.

* Cf. the article of F. von Hummelauer, "Zum Deuteronomium," in *Biblische Studien*, vi. 1, 2 [Freiburg in Breisgau, 1901].

CHAPTER VI

DID HAMMURABI'S CODE INFLUENCE THE MOSAIC LEGISLATION ?

Something more than priority needed for the legislation of one people to affect that of another—The social circumstances of Israel, as represented in the Mosaic Law, very different from those reflected in Hammurabi's Code ; so were the economic conditions—The spirit and tendency of each Code also greatly differed—The Mosaic Law was completely independent of that of Babylon.

HOWEVER old we allow the Mosaic legislation to be, the legislation of Hammurabi preceded it by many centuries. But as the Babylonian Law made itself felt wheresoever Babylonian influence forced its way, the important question is raised, whether and how far the Mosaic Law, in its criminal and civil portions, may have been founded upon that of Hammurabi ? To answer this question is the chief object of the following investigation.

First of all, I deny that the Code of Hammurabi, because it is older and partly, it may be, more complete than that of Moses, must have influenced it. All influencing depends upon particular conditions. As a mechanical impulse does not, by any means, make an impression on every object which it meets, as only substances of a certain kind conduct the electric spark, so also the stream of culture can meet

both bad and good conductors on its way. As a rule, in intellectual matters only elements of a like nature are able to influence each other. Moreover, laws, as the peculiar formulæ of the life of peoples, can only be imported where related habits of life, similar social divisions, and like economic efforts concur. The law of Babylon never conquered the Beduin who ranged up to the gates of Babylon; a whole world of views and conditions of life separated the two. Similarly must we regard the relationship between Babylon and ancient Israel. It is sufficient to pick out of the Mosaic Law the most important of social and economic forms and compare them with those found in Hammurabi's Code, in order to perceive a series of contrasts which would not allow of approximation through a common law. Hence, if we consider the spirit which breathes in the legislation of Israel and in that of Babylon, even those things which here and there appear to be outwardly related are seen to be separated by a deep chasm.

The class organization of Israel, as is taken for granted by the Mosaic Law, discloses a certain but not deeply seated dualism owing to the antithesis of priests (*kōhēn*) and non-priests (*zār*). While the older law leaves it doubtful whether the priesthood represents, throughout, an hereditary dignity, the later shows a priesthood whose dignity was chiefly based upon membership of a particular tribe. The Hebrew priest, as distinguished from the layman, in no way represented a legally privileged individual; but his office brought the enjoyment of certain advantages, as well as obligations to render certain services which did not make his circumstances quite equal to those of the non-priest.

The laity, who formed the great mass of the people,

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were divisible into four chief classes: (1) genuine members of the tribes (*äsräch*); (2) clients (*gér*); (3) settlers (*töshāb*); (4) slaves (*äbād*).

(1) The characteristic of genuine tribal membership consisted in lawfully belonging to a particular tribe (*shebāt*) by reason of kinship and share in political privileges. Every tribe exemplified self-government; theoretically, every member of a tribe was entitled to co-operate in the political life, yet, as a rule, more important decisions were come to through the elders (*zeqenim*), men of experience and position. With them, as also with the princes (*nasī*), who were the descendants of one particular old family, rested the external representation of the tribe. In the administration of justice, various ranks of civil judges shared, while in complicated cases the priests also gave judicial decisions.

(2) The *Clients* consisted of those belonging to foreign tribes or people who had acquired the legal protection of a tribe and either continued "in its midst" or transitorily sojourned "within its gates." Their legal position developed itself by the advancing centralization of the tribes so favourably that they gradually succeeded to equal rights with the genuine members of the tribe, and came to be regarded as one people (*ām*) with them.

(3) The *Settlers* were likewise foreign to the tribe, being probably subjected tribes who had surrendered themselves to Israel by capitulation. The older law knew them less in the character of people without property than as those outside the law, the greater part of whom, however, probably soon blended with the tribes of Israel and made with them a homogeneous people.

(4) The *Slaves* represented the lowest social grade,

and were in the first place distinguished as those bought with money and those born in the house. Along with these two classes, which comprised those who were slaves for life, there were also Israelites who had lost their property and had become temporarily reckoned in the slave class ; if they were redeemed or released they had the standing of freedmen (*hophshi*), but retained their former lord as patron.

In spite of the original connection which must once have existed between the social classes of Babylonia and Israel, it strikes one that the condition in which we find them historically, at the time of Hammurabi and of Moses respectively, shows some fundamental difference. Apart from the slave class, which remained similar in both cases, there is scarcely any resemblance between the ranks of the two communities.

In Babylon society was divided into two opposite groups, one made up of the king, court, and priesthood, and the other of the governed, whose freedom, however, the king practically regarded as slavery. This division did not exist in Israel. There the great mass of the people, the class of the fully free, was in the possession of all rights and means of self-government and, accordingly, had sovereign rights ; what it yielded up of its rights, for convenience, to its trusted men, ever fell back again to it when it declared their authority to be expired.

In Babylon the classes which made up the social organization had become settled, though not defined by law. In Israel there was, in the position of clients and settlers, much which was still unsettled, so that the problem of class organization was kept in a state of constant uncertainty. In Babylon the idea of the State embraced all classes in a firm common bond of union, but in Israel it was felt more as a fetter,

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restraining individuality, and found partisans only in time of common trouble.

That which is of importance in the various divisions of the social organization of Israel rests entirely on the principle of kinship. Hence above all else is the tribe, with its different subdivisions. Members of the same tribe felt themselves to be as "brethren" and "neighbours" to one another; as such they appear for one another whenever the injured honour or the lawful interests of one among them cried out for help.

Marriage furnished the smallest unit in the tribe. It was made by a form of wife-purchase on the part of the man, who deposited a marriage settlement [or gift] with the father-in-law. The wife remained the property and companion of the husband so long as he duly rendered to her sustenance, clothing, and intercourse. If the man found his wife's honour sullied he had the right to dismiss her on delivering to her a deed of divorce; if the divorced woman was childless she could, without further ceremony, return to her father's house. The barrier of monogamy did not exist; bigamy on the part of the husband was a common event. If, on the one hand, marriage with near blood relations was not allowed, on the other hand a sort of duty fell to the brother-in-law of marrying his sister-in-law if she became a widow and was childless.* Of the children of marriage, the firstborn son might claim special rights; to him fell the larger inheritance, the other brothers inherited after him; daughters succeeded to an inheritance only on the failure of male heirs. However insignificant the regard paid to a married woman externally, in the midst of her

* [For further discussion of this subject, see the translator's chapter on levirate marriage, pp. 124-128, below.—TRANS.]

family, with reference to the children her authority was equal to the father's.

Comparing these with the analogous circumstances of Babylonia, we are most struck by the almost complete extinction of the tribal idea in that country. The heavy sacrifices which a tribe of Israel must make, under certain circumstances, for those belonging to it stands in contrast with the restricted responsibility of a Babylonian district for persons injured in their territory. With respect also to the marriage tie, many things appear otherwise in Babylon, and generally in favour of the wife. In Israel, while the wife was looked upon by the husband as a purchase, in Babylon this idea could not be held, because the woman came into the marriage with a dowry, and she could preserve and earn her own possessions in the same married union. Among the Israelites there was no prescribed number of wives, but in Babylon the monogamic principle ruled and could only be broken through when the first marriage was childless.* Again, the inequality in position of the younger to the firstborn, of the girls to the boys, which is to be noticed in the Israelite, as also in Old Semitic law, the Babylonian Code appears to have almost annulled, since it says nothing of the rights of the firstborn, and every girl received a portion of her father's substance, except perhaps of the landed property.

The economic circumstances of Israel, as depicted by the older parts of the Mosaic Law—which have in view the life of Israel in Midian or on the east of the Jordan—are those of nomads who had just

* But, to conclude from the marriage of Elkanah (1 Sam. i. 1), in Israel, also, the second wife was taken, generally, only when the first wife was childless.

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become settled and agricultural communities, comparable to the Arabian *ḥadāri* or inhabitants of small towns, near whose lands their kindred the Beduin, still as nomads, pitch their tents. Among the Israelites the chief value was put upon the possession of agricultural land, which it was the business of the owner and his slaves to manage, although also dependants and hired servants, who were probably impoverished fellow-tribesmen, were drawn into the work. Farm management necessitated the keeping of cattle; hence the importance to the Israelites of oxen, asses, and sheep. Household and agricultural implements, also, were of value to them. Money, that is silver, as a means of purchase and as redemption money, played a not unimportant rôle, but not yet as working, interest-bearing capital; for trading both opportunity and desire were wanting. An artisan class does not come into consideration, while of the arts the healing art chiefly deserves mention, and it was partly in the hands of the priests. In private life religious worship played a manifold part; they regarded the day of rest, celebrated appointed feasts, observed the year of release by performing various acts of restitution; paid tithes to the priest and offered, at least in principle, the firstling to Jehovah, and circumcision was the seal of religious homogeneity.

But in the Book of Deuteronomy we notice a change of the proportions of this picture. Israel now inhabits towns as well as open country; trade and loan business is, to a small extent, added to agriculture, but the gains of it are limited, as usury is taken only from strangers.

Comparing with this the economic circumstances of Babylon, we see that they resembled one another so far that the economic foundation of both peoples

was agriculture. But in Babylon it was such to a very great extent, while only to a small extent in Israel; in the former the produce of the land served as merchandise, in the latter it was the means of daily support. Babylonian agriculture was very much regulated by monetary arrangements, because the cultivator must often first hire his land; but the peasant in Israel cultivated his own ground. The further results of financing, such as great industries and strictly organized manual labour, scarcely affected Israel, which was, in this respect, in the completest antithesis to Babylon; as only the smallest measure of his products became turned into money, the Hebrew thus lacked the possibility of competing in business with his great neighbour. The more refined pleasures of life, as they were cultivated in the town society of Babylonia, stood in contrast to patriarchal contentedness. That which elevated and beautified the life of an Israelite above all else was his share in the services connected with the worship of his God.

The foregoing brief survey of the forms and factors of public life, which are represented in the law-books of Hammurabi and Moses respectively, might suffice to repel the idea of their influencing one another or of Moses' making use of Hammurabi's Code; while the more we consider the tendency, which is so clearly manifest, in the Law of Moses, the more plainly absurd must such an idea become.

The Mosaic Code connects the idea of law, as well as lawful living, directly with God. As Jahveh promulgated it amid the-thunder-peals of Sinai, in like manner the Divine Voice continually sounded throughout its further development. The God of Israel is a great Moral Being, therefore His legal commandments must have a moral tone, sometimes louder,

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sometimes gentler, but always clear enough to be heard by attentive ears.

The moral idea is least noticeable in the first half of the so-called Book of the Covenant (*i.e.* Exod. xxi.-xxii. 19). We might suppose that purely secular law was here propounded, because even in the law against idolatry the opportunity to make the voice of Jahveh heard is neglected. But in order to value the Book of the Covenant aright we must have regard to its place within the framework of the Law; above all, its dependence on the Ten Commandments proclaimed immediately before. After the Divine standpoint of the lawgiver and the moral background of all law had been firmly, clearly, and distinctly laid down in these, then the customary form of the Old Semitic legal style could be retained for separate ordinances without appearing to be brought down to the merely human standpoint. Only if internal contradictions between the ethics of the Ten Commandments and the spirit of the Book of the Covenant were demonstrable should we have the right to raise the question of the formal connection of both parts of the Law; but I cannot concede that such contradictions exist.*

* Friedrich Delitzsch, in his *Babel und Bibel*, ii. p. 26, argues otherwise. He exclaims: "Would any one venture to affirm that the thrice holy God, who with His own fingers graved in the Table of Stone, *Lō tirzach*, 'Thou shalt not kill,' may, in the same breath, have sanctioned the blood-vengeance which burdens as a curse the people of the East unto this day, while Hammurabi had almost abolished every trace of it?" It entirely escapes Prof. Delitzsch that not only Moses in the ancient East, but also now in the penal law of our civilized states, a fundamental difference is made between murder and the use of the sword in legal punishment. The avenging of blood which Moses sanctioned only allowed the means by which the penalty of Old Semitic justice took effect, under appointed stipulations

If it was a defect in the more ancient Book of the Covenant that it did not illustrate all the Ten Commandments, the further development of the Law sufficiently made good that defect. This leaves the connection of the Law, in every main point, with Jahveh no longer uncertain, even if the oath "I am Jahveh" did not conclude so many of the injunctions. Thus, then, the purpose of God in giving the Law, with reference to the workings of that Law in the spiritual life of the community, is made clear by the precept, "Be ye holy, for I am holy." Hence it comes that, particularly in Deuteronomy, the aim of Jahveh's Law was to regulate the social circumstances of the community from below upwards; for [Deut. x. 17, 18] "the Lord . . . the great God, the mighty, and the terrible, which regardeth not persons, nor taketh reward, doth execute the judgment of the fatherless and widow, and loveth the stranger in giving him food and raiment." This trait of love for the weak softens the harsher judicial aspects of the older time.

The fixing of appointed penalties for the transgression of the precepts of God is very often omitted. The importance, indeed, of expiation is emphasized; it does not, however, appear in its Old Semitic form, as a due to the injured person, but in the form of an expiatory offering presented to God. From the

and formalities; but his command to do no murder branded the outrage of him who regarded not the life of his neighbour.

Moreover, Delitzsch's view of blood-revenge as the curse of the East is diametrically opposed to the view of J. L. Burckhardt, that most competent judge of Beduin life, who recognized in the blood-vengeance of the Arabs a most salutary arrangement, which more than any other circumstance may have contributed to hold back the warlike Arab tribes from destroying one another. (Cf. Burckhardt's *Bemerkung über die Beduinen und Wahaby*, Weimar, 1831, pp. 119, f.)

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complete freedom which many malefactors had in the former time the Mosaic Law developed separation from spiritual relationship with Jahveh and His servants, as well as the ritual malediction. A required duty was not seldom sweetened with a promise—the opposite of the threat of punishment—to those who acted conformably to the Law. Thus none of the Ten Commandments carries with it a threat of punishment, but the Fifth bears with it a promise. The latter suffices to invalidate the opinion lately propounded * that the Ten Commandments were only penal law propositions, tacitly supplying the sanction of punishment, which was that the offenders should be put out of the way by the hand of the avenger. As such a view does not agree with the high moral spirit of the Mosaic Law, neither, similarly, does the doctrine of the Talmud that all prohibitions which are without sanction of punishment, 365 in number, are to be understood as saying that the transgressor is to be corrected with forty stripes save one. But instead of thus making, with the Talmud, the punishment for every transgression of the Law equal, we ought, perhaps, to affirm that the Mosaic Law, as laid down for morals, no longer clearly distinguished between greater and lesser duties. As a striking example of this, we might adduce the case of the fulfilment of the law of love to parents, which influences social communities most deeply, for it closes with a promise of reward, which promise, almost exactly, recurs when the duty is spoken of of allowing the mother bird, caught in the nest with her young, to fly away.† But with perfect certainty we must ascribe to Moses

* By Gerhard Förster, *Das mosaische Strafrecht*. Leipzig, 1900, pp. 67, ff.

† [See Deut. v. 16, and xxii. 6. 7.—TRANS.]

the endeavour to have equally meted out the measure and kind of duties required of each member of the community: "One law shall be to him that is home-born, and unto the stranger that sojourneth among you." With this equality corresponds the fact that the Mosaic Law, in its Deuteronomic colouring, does not bow, even before the authority of a king; it rather prescribes to the king that he shall have at hand, all his life through, the Book of the Law of Jehovah, copied from one in the charge of a priest. It leaves, it is true, the organ of justice of the earlier time in power, but, for the decision of more difficult questions, it grants judicial authority to the priest. Lastly, it assigns to every member of the community the duty, depending on circumstances, of coming forward as executor of penal judgments.

A comparison between Moses and Hammurabi, which takes into consideration, above all, their main outlines and tendencies, will never lead us to make Moses in these things a pupil of Hammurabi. But we can go further, and of all the details which are peculiar to the later stages of development of the Mosaic Law, affirm complete independence of Babylon, without thereby arousing serious opposition; for there are perhaps no ancient laws more different from one another than are those of Hammurabi and Deuteronomy. "Comparison with the Law of Moses obtrudes itself everywhere," says Dr. Winckler (*Die Gesetze Hammurabi*, p. 7), apparently with reference to the first part of the Book of the Covenant (Exod. xxi.-xxii. 19). If, therefore, a comparison of this with Hammurabi negatives Dr. Winckler's opinion, it can no longer be supposed that Moses took over or worked up Hammurabi's Code.

CHAPTER VII

DETAILED PROOFS THAT THE MOSAIC LAW WAS INDEPENDENT OF HAMMURABI'S CODE

The beginnings of the Mosaic Code in the first half of "The Book of the Covenant" (Exod. xxi.-xxii. 19)—These compared, clause by clause, with Hammurabi's legislation show complete independence of it; any identity is due to a common Old Semitic base for each—More general proof that the Mosaic legislation is independent of Hammurabi's is found in the absence from it of Babylonian legal terms.

Conclusion.

A SIMILARITY in the formula of the law-books of Babylon and Israel may be conceded, for, as a whole, every paragraph of Hammurabi begins with the word "if;" in like manner most of the enactments of the Book of the Covenant begin with a conditional particle. For this we should not make Hammurabi responsible, but rather the spirit of penal law in general; no one would connect Moses with the authors of the Roman Twelve Tables or of the Old German collection of laws because those bodies of legislation show similar phraseology. Thus it is not the outward form, nor is it the similarity of certain legal questions, but only the principle which governs their solution, which can decide whether there is a direct connection between them. How, from this

point of view, Moses stands with reference to Hammurabi we will now see.

The first laws which are given in the Book of the Covenant (Exod. xxi. 2-6) treat of purchased Hebrew slaves, who, it is there laid down, after six years' service should be set free again, and their wives with them; except when their wives had been given to them by their masters. The slaves might, however, remain, as such, with their masters; but in that case they were to be marked with a particular mark in the ear. Hammurabi (§ 280) allowed a Babylonian subject who had been bought as a slave in a foreign land, and afterwards brought back into the fatherland, to go out free, and decided (§ 117) that members of a free family brought into confinement for debt should be set free after three years. Here, Moses and Hammurabi are only alike in this, that a subject of the land who had fallen into slavery should enjoy greater privileges than one born in slavery. But this is Old Semitic custom, as certainly follows from the same view being held in the law of the Bogos.*

Exod. xxi., verses 7-11.—Law with reference to an Israelitish woman who was given by her parents into slavery; she was not to be released [as a bondman was, after six years' service] nor to be sold, but she might be redeemed. As wife she should enjoy all the rights of a married woman, and be free if any of these were denied her. Hammurabi, in the passage above mentioned, makes no difference

* Werner Munzinger, *Ueber die Sitten und das Recht der Bogos* Winterthur, 1859). § 40: "Born bond-slaves have not the right to buy their freedom. Bond-slaves, descended from free parents, have the right . . . to purchase their freedom from their masters."

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between bondmen and bondwomen of Babylonian descent.

Verses 12-14.—The death-penalty was attached to intentional homicide; the unintentional manslayer might be protected by asylum (which was probably a sanctuary or an altar of Jahveh), not so the intentional murderer. It is remarkable that Hammurabi does not even mention intentional homicide, but on homicide which was proved upon oath to be unpremeditated he laid a fine of half a mana of money (§ 207). The Old Semitic law admitted no difference between intentional and unintentional homicide;* but recognized certain holy places as asylums for murderers.† Moses took over and justified this conception, recognized unintentional homicide, and for that only allowed asylum. Hammurabi, however, quite disowned the Old Semitic standpoint, in so far as he took unintentional homicide to be a mistake, expiable by a light fine, and apparently did not recognize places of refuge for murderers.

Verses 15, 17.—He that smote, wounded, or cursed father or mother should be put to death. Hammurabi (§ 195): "If a son smite his father, his fingers shall be cut off." Hammurabi here is much less severe than Moses, and also recognizes no punishment for the wronged authority of the mother. In this he deviates as far as possible from the Beduin, *i.e.*, probably, the Old Semitic usage, in which the mother stands much closer to the children than the father.‡

Verse 16.—He who in any manner stole an Israelite

* *Recht der Bogos* [see footnote on previous page], § 192 a.

† Cf. Otto Procksch, *Ueber die Blutrache bei den vorislamischen Arabern* (Leipzig, 1899), p. 44.

‡ Burckhardt, *Bemerkungen über die Beduinen und Wahaby*, p. 284.

should be put to death. Hammurabi says (§ 14), "If any one steal the young son of another person, he shall be put to death;" and (§ 24), "If persons are stolen, the township and its Rabianu * shall pay a mana of silver to the relatives." What is here common to the two Codes is derived from the Old Semitic law,† whose first principle is the inviolability of the person.

Verses 18, 19.—If in a struggle one man injures another with a stone or his fist so as to cause him to keep his bed, he shall compensate the man he has smitten for loss of time, and pay the expenses of his illness. Hammurabi's law on this point (§ 206) is, "If one man strike another in a quarrel and wound him, he shall swear, 'I did not do it knowingly,' and shall pay for the doctor." In principle, the two cases have little in common. Moses lays the stress on the circumstance that one man causes another a non-mortal wound with a non-dangerous instrument, as a stone or the fist; but Hammurabi says, any one who injures another in a struggle, that is unintentionally. The order of thought in Moses in the formulating of the case of law and penalty is Old Semitic; ‡ the mildness of Hammurabi's conception of injury inflicted without premeditation may almost be called modern.

Verses 20, 21.—The death of a bondman or bondwoman, caused by the smiting of the master, shall

* [But cf. note 1, p. 134, below. The Rabianu was the city governor. See p. 31.—TRANS.]

† *Sitten und Recht der Bogos*, § 188: "Whoso steals or sells a person of the land comes into blood feud with that person's family, and so falls under the law of blood vengeance."

‡ *Recht der Bogos*, § 205: "Whoso wounds a person with a stick or stone, or with any other implement not of iron, does not come under the law of blood vengeance, but is bound to pay compensation."

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be avenged, unless the smitten one live some days after receiving the blows. Hammurabi (§§ 199, 213) attached only a money penalty to the injuring by blows the slave of another person. With Moses, the Old Semitic idea that a slave is a person entitled to protection takes effect; on this account the Bogos also (§ 46) allow blood revenge to follow his being killed. With Hammurabi—in opposition to the Old Semitic view—the idea of a “slave” had come to have the common meaning of a “bought slave;” that is, a piece of property of his master.

Verses 22, 23.—In a brawl in which a woman with child received a blow causing her to miscarry, the smiter should pay a sum to be fixed by the injured woman's husband. Hammurabi (§ 209): “If any one strike a free-born woman so that she lose her child, he shall pay ten shekels of money for her child” (according to §§ 211 and 213, the payment should be less for freed bondwomen and female slaves). The cases in the two Codes are essentially different. Moses speaks of accidentally striking a woman, Hammurabi of intentional blows; moreover, according to Moses the decision of the case belonged to the family; according to Hammurabi, to the public tribunal.

Verses 24, 25.—For every bodily injury (brought about by dangerous instruments), the *lex talionis* steps in: “Eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe.” Hammurabi (§§ 196, 197, 200) attached the *lex talionis* to injury of eye, bone, or teeth of the free-born; like Moses, he here allowed the operation of the Old Semitic *talio* law which had even at that time coined the formula “eye for eye.*

* *Recht der Bogos*, § 193 b. For the Arabs, compare Ahlwardt, *Sammlungen alter arabischer Dichter*, Band I., Ged. 66, v. 2.

With Moses it showed itself more strict—that is, more primitive—than with Hammurabi.

Verses 26, 27.—Whoever knocks out the eye or tooth of his slave should give him his freedom in compensation. Hammurabi has no analogous law.

Verses 28–32.—When a goring ox killed (*a*) a stranger or (*b*) a slave, the ox should be stoned in each case. Moreover in (*a*), if the owner knew of its dangerous habit, he himself was declared, in principle, to be guilty of death, while in practice a money ransom was commended; in (*b*), thirty shekels were to be paid to the owner of the slave. By Hammurabi's Code (§ 250), "If an ox on its way gored any one to death, no claim in this case shall be allowed;" § 251, "If the ox of a freeman is given to tossing, the fault has been pointed out to the owner, but he has not caused its horns to be blunted (?), and has not provided it with a nose-ring, and the ox gore to death a free-born person, the owner shall pay half a mana of silver" (according to § 252, for a slave it should be one-third of a mana). Moses and Hammurabi looked upon the apparently analogous case from quite different points of view. Moses treated it according to the idea of the *lex talionis*, hence the first thing is that the ox is to be killed, and in this he represented the same usage as the Bogos;* that is, of the Old Semites generally; Hammurabi considered it as only a case of unpremeditated killing,† and recognized no fault of the ox, but only of its owner.

Verses 35, 36.—To the laws of Moses here given,

* *Recht der Bogos*, § 204: "The bull or the cow or any animal which kills a person shall be put to death."

† [See above, p. 68.—TRANS.]

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of the case when one ox kills another, Hammurabi has nothing corresponding; just as he has nothing corresponding to verses 33 and 34, which establish the responsibility when cattle fall into a cistern (or "pit") which has been allowed to stay open.

Verse 37 [and xxii. 3; Exod. xxii. 1 and 4 in the English version].—For stealing an ox, the thief shall pay the maximum penalty of five oxen; for a sheep, of four sheep, in case the stolen animal cannot be recovered; if it was recovered, the thief got off by restoring it and paying another one to make amends; if the thief had no means [to make restitution], he lost his freedom. Hammurabi (§§ 6 and following) attached generally to theft, and the being accessory to theft, the death-penalty, which, however, in some cases (§ 8) he mitigated to the payment of a thirty-fold or even tenfold compensation. Moses and Hammurabi had radically different ideas about theft. "Moses stood near to the Old Semitic standpoint, according to which, theft within the tribe entailed only restitution and recompense;"* but with Hammurabi theft was a capital offence as an encroachment upon the rights of property, which was to be protected under all circumstances.

Exod. xxii. 1, 2 (verses 2 and 3 in the English version).—Blood vengeance was not allowed to follow the slaying of a robber caught breaking into a house by night, but it was allowed if the thief was killed in daylight; while Hammurabi's Code (§ 21) says, "If any one break into a house, he shall be put to death before the breach and buried in it." According to Moses, the robber had still, under certain circumstances, personal honour (which calls to mind the law

* *Recht der Bogos*, § 173.

of the Beduin *); with Hammurabi, he was infamous. Hence, the two lawgivers arrive at different estimates of the punishment due.

Verse 4 (English version, verse 5).—When animals put to feed in a field or garden injure a neighbour's field, compensation should be made for the damage; if the whole field of the neighbour were eaten up, the owner of the cattle should make restitution of his best. Hammurabi decrees (§ 57), "If a shepherd allow his sheep to pasture in the field of another without permission of the owner of the field, such owner shall reap the shepherd's field, and the shepherd who has allowed the sheep to pasture without consent on another's field shall, for every ten *gan* (rods), pay twenty *gur* (camel-loads) of corn to the owner of the field." Moses judged the causing of the damage to the field to be a mistake reparable by compensation; but Hammurabi saw in it a punishable encroachment on the property of others, and therefore, besides compensation, affixed a penalty above the value of the normal produce of the field (cf. § 63).

Verse 5 (English version, verse 6).—Compensation for setting a field on fire; Hammurabi does not mention this case.

Verses 6, 7 (7 and 8 in the English Bible).—When deposited property (money or goods) was stolen, the depositary was not bound to make restitution if he released himself by oath; the thief, when discovered,

* Burckhardt, *Bemerkungen über die Beduinen*, p. 127 (as in other passages): "The Arab robber regards his profession as an honourable one." [But is not Moses' point of view a higher one than that of the Beduin here referred to; is it not (what is also the Old Semitic view) that the life of the robber is of more importance than goods are? Of course, breaking through into a man's house during the hours of sleep and darkness is more serious and more sinister than daylight robbery.—TRANS.]

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should pay double the amount stolen. Hammurabi's Code (§ 125) threw on the depositary the obligation of full reparation, and to indemnify himself from the thief. Moses represented Old Semitic law which recognized no responsibility for deposits; * perhaps, also, he reckoned the theft of things as less than the theft of cattle. Hammurabi did not hold the Old Semitic idea of property, and consequently insisted on restitution.

Verse 8 (English version, verse 9).—When cattle or things were injured, and one accused another person of being the cause of the injury, the question was decided by both parties "coming before God"—that is, by a sort of judgment of God; he who lost should pay double to the other party. Hammurabi's Code had no corresponding case; if it had, the decisions would be different from that of Moses, because Hammurabi knew only of an ordeal or judgment of God to which the accused alone must submit himself.

Verses 9-12 (10-13 in the English version).—When cattle entrusted to the care of another got lost without his fault, he could clear himself by oath, and then he was not held liable for compensation; for cattle thus in charge which were demonstrably torn in pieces by wild beasts, the keeper was under no circumstances liable; but he was responsible if the cattle were stolen. Hammurabi (§ 266) decreed, "When a stroke from God fall upon a herd, or a lion kill any of them, the shepherd shall clear himself before God, and the owner of the herd shall bear the misfortune." Here (as in § 263 and § 267 which contain further particulars) Hammurabi reached the same fundamental principle as Moses, that a shepherd who discharged

* *Recht der Bogos*, § 153.

the guardian duties of his office according to his ability was not called on to make compensation for loss, but the careless shepherd was. It is very probable, therefore, that old shepherd law still operated here.*

Verses 13, 14 (English version, 14, 15).—The borrower of cattle which became injured must make simple recompense if he was absent when the injury was done, but not if he was present; if the animal was hired, the risk of injury was reckoned in the hire.† Hammurabi's Code contains no clause like this, and the omission is not accidental, because the lending of cattle, especially gratuitously, would scarcely have agreed with the economic circumstances of his time.

Verses 15, 16 (in the English version, 16, 17).—If a man had conjugal intercourse with an unbetrothed young woman, he must marry her; but if her father would not give her to him, the man must pay her a sum of money equivalent to the nuptial gift. Hammurabi does not deal with this case.

Verse 17 (English version, 18).—A sorceress—that is, a woman who employed magical arts to injure others—should be put to death. Hammurabi (§ 1) attached the death-penalty to the unproved accusation of having practised sorcery (? *nertu*) upon another; on the other hand (§ 2), the accusation of witchery (*kispu*) was to be decided by the judgment of God (ordeal by water). What is here alike in the laws

* When W. Munzinger (*Ostafrikanische Studien*, p. 318) observes that among the Beni Amer of Abyssinia the shepherd is not made answerable for lost or stolen cattle, it is, as here, with the limitation "in case he has done his duty."

† [Our Revised Version of this text makes the borrower's liability depend on whether the *owner* (not the borrower) was present when the injury was done.—TRANS.]

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of Moses and Hammurabi is explained by tracing both back to the Old Semitic practice.*

Verse 18 (English version, 19).—Any one committing bestiality shall be put to death. Hammurabi's Code is silent as to such a case.

Verse 19 (English version, 20).—Whoso sacrifices to idols instead of to the Lord God shall be banned.† Hammurabi, agreeably with the purely civil character of his laws, has nothing like this.

The foregoing comparison of the two statute-books yields the following results: Numerous cases treated in the Book of the Covenant are absent from Hammurabi's Code; often the same case occurs in both Codes, but the decision given upon it is different. Where the same case occurs followed by the same decision, the common source of both existed long before Hammurabi's time in the Old Semitic customary law. Any direct influence of Hammurabi's law on the Mosaic penal law is, therefore, to be regarded as out of the question.

A final argument for the Mosaic Law, *taken as a whole*, being independent of Hammurabi's legal Code, may be adduced; the full demonstrative force of which, however, would only be made evident by a detailed exposition which would here be out of place. The argument is this: It is characteristic of every higher culture that it forces its own use of language

* *Recht der Bogos*, § 192: "Any one convicted of having by evil arts taken the life of another person shall be put to death, and his whole family driven out into the country" [*i.e.* be banished from the community into the uninhabited parts.—TRANS.]

† [The Hebrew word here used means strictly, "devoted," which, however, according to Lev. xxvii. 29, and other places, is equivalent to "given up to death."—TRANS.]

upon a more primitive culture which comes near it, whereby, as a first result, ideas which have become as current coin in the higher culture become transferred to the lower. This transference especially holds good with respect to the form and expression of the common law. Had Moses borrowed from Hammurabi's Code, Babylonian words would be found in his vocabulary; but for these, throughout his terminology, we seek in vain. Neither from the expressions for the Babylonian law of public life, for example, those for witness, purchase, sale, hire, debt, capital, interest, contract, legal decision; nor those for the law respecting the family, *e.g.* for husband, wife, concubine, marriage settlement, marriage portion, inheritance, divorce, does there appear in the Hebrew legislation any term which is demonstrably a Babylonian loan-word; there is nothing more than a few words expressing general ideas in jurisprudence, such as judge (*daian*), judgment, and possibly lawsuit (*din*), which appear alike in both Codes, and prove, at the most, that the Babylonian and the Hebrew are both branches of the primitive Semitic language.

In the course of our investigation it has been shown in various ways how the culture of Babylon has affected Israel; the history of the Patriarchs is built on the foundation of Babylonian law, and the kings of Israel strove to copy the outward forms of its Eastern neighbour. But still the Bible is a book in no way inspired by the Babylonian spirit. Where the influence of the Babylonian spirit appears to be present, it is our duty to investigate whether it determines substance or form. Legislation is always one of the essential features in the portraiture of a people; legislators were honoured in antiquity as heroes, to

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us they are landmarks of human culture. From the comparison of Hammurabi and Moses, the lawgivers of the ancient East, it follows that each of them impressed his mark upon his people, who bore that impress throughout the whole period of their history; but between the former, who, in his Code, carried out the secularization of the law with conscious purpose, and the latter, who guided the law into paths proceeding from God, lead by God, and advancing the Divine in man, and thereby prepared the way for the Christian law in customs and morals, —between these two legislators there existed no way of connection, and there never was any transference of ideas. Like two mountains, in the far distance, they are prominent in the history of antiquity: the head of the one is overshadowed by the clouds, while the contours of its mighty base, which rests on the plain, stand out in tranquil brightness; but as removed from earth and encircled by an ocean of Divine light, the summit of the other shines forth and well-nigh blends with the infinite ether.

PART II

**THE HISTORY AND ARCHÆOLOGY OF
THE HAMMURABI AND MOSAIC CODES**

BY THE REV. W. T. PILTER

CHAPTER I

HAMMURABI AND THE HEBREW PATRIARCHS

Some events in the history of the Hammurabi period, and their bearing on the history of the Hebrew Patriarchs.

THE discovery at the beginning of the twentieth century of the Christian era of a complete Code or digest of civil and criminal law which was promulgated in Babylonia some six or seven hundred years before the time of Moses, while most gratifying to the Assyriologist and a marvel to the ordinary public, is a discovery which casts a bright beam of light upon the pre-Mosaic period of Old Testament history, and must profoundly and permanently modify our conceptions of the civilization of the ancient world with which the Patriarchs of Israel were in contact.

The character of the Code and the circumstances of its discovery are sufficiently set forth by Professor Hubert Grimme in the foregoing sketch ; in the pages which follow I propose to further elucidate, for the English reader, some points in that sketch, chiefly by means of the inscribed monuments of the Nearer East which have come down to us from Old Testament times, and to set forth the importance and significance which the Code of Hammurabi * possesses for the

* The initial letter of Hammurabi's name is the very strong but "smooth" guttural *h*, corresponding partly to the Hebrew *heth* ; it is often represented by the Roman letters *hh* or *ch*, or,

modern study of the oldest documents of the Bible. It may be as well to say at once that both the Code and the archæology afford very strong circumstantial evidence of the authentic character of the Pentateuch in both its history and its legislation.

Our first illustration of this is the fact, which Professor Grimme has clearly proved (see pp. 45-47, above), that the Patriarchs Abraham, Isaac, and Jacob did actually live under and were in the main ruled by the provisions of Hammurabi's Code. This is a testimony to the historical character of the patriarchal narrative as striking as it is unimpeachable.

There is much more evidence of the same sort, if less striking, afforded by the monuments. It is chiefly *concordant* with the Pentateuchal history, and not direct. This was to be expected. But for contemporary records of a distant antiquity to be in agreement with traditional literature dealing with the same remote period is in itself strong confirmation of the trustworthiness of that literature; for had it originated in a much later time, or if its dating were fraudulent, this would soon be betrayed when confronted by witnesses of the date postulated.

The remarkable episode of Gen. xiv. afford us a good opportunity of testing the Biblical history by the monuments. On the presumption that the "Amraphel, King of Shinar," there spoken of is, as most Assyriologists believe, Hammurabi himself, he (along with "Arioch, King of Ellasar," and the other allies) must have associated himself with Chedorlaomer, King of Elam, for the raid into South-Eastern Canaan in the early years of Hammurabi's kingship; for at that time

better than either, by *k* or *h*. It should here be added that there is reason for believing that the date usually assigned to Hammurabi (about B.C. 2200) will have to be considerably reduced.

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the power of Elam predominated in Babylonia. Afterwards the tables were turned; Hammurabi repeatedly warred against Elam, and did not rest until, in the thirtieth year of his reign, he had subdued it.* Now, when Gen. xiv. was written, it is evident, from the first verse, that the name of Amraphel (Hammurabi) had come to be the most important of the four allied kings. The chapter, substantially in its present form, must, therefore, have been written some years after the raid, though, from the tone and details of it, not very long after. It would appear, therefore, that we are indebted to the pen of some contemporary for the original narrative of the episode,† which Moses

* This—which Mr. King described (before the discovery of the Code *stela*) as “the chief event of Hammurabi’s reign, for his victory freed Babylon from her most powerful enemy”—is, of course, duly noted in its place in the Babylonian “Chronicle of the Kings of the First Dynasty,” but a very interesting reference to some circumstances of it appears to be preserved on a tablet excavated by Prof. Scheil at Sippar in 1894, and now in the museum at Constantinople. It is a brief, business-like list of numbers of gazelles (*sabitē*), which make up the enormous total of 42,250, collected, apparently, from the different persons named, and is dated in the 13th day of the month Adar, in the year the army was at Elam. Herr Thomas Friedrich, in publishing this tablet (No. IX. in his *Altbabylonische Urkunden aus Sippara*, Leipzig, 1906), remarks that the circumstances recorded happened in the 30th year of Hammurabi, when there was war with the Elamites, and so the gazelles may have been obtained for the alimentation of the Babylonian army in the field. This seems a likely explanation.

† Prof. Fritz Hommel, in his *Ancient Hebrew Tradition*, pp. 192, ff., insists that it must have been written down in the cuneiform script very shortly after the events, in Palestine, and, probably (p. 153), by a scribe of Melchizedek. Prof. Sayce has quite lately (in the *Expository Times*, August, 1906) given a running commentary on the chapter from the standpoint of a cuneiform scholar.

Of quite a different character from the historical narrative of

afterwards, under special Divine leading, incorporated in the Book of Genesis.

The fourteenth chapter of Genesis, therefore, exactly fits into the period as extant Babylonian monuments make it known to us. That this is so, that the Patriarchs of Israel were subject to Babylonian law while they lived in Canaan (partly because they were themselves of Babylonian origin, and partly also, as we shall presently see, because Canaan itself, during nearly the whole of that period, was subject to Babylon), and the further consideration that there is no extant monumental evidence antagonistic to the history of the Book of Genesis,—these facts, taken together, fully justify us in accepting the narrative of that book (or, at least, so much of it as contains the patriarchal narrative) as fully

Gen. xiv. is the interesting but mythical legend of these same three kings—Chedorlaomer, Arioch (Eri-aku), and Tidal (Tudhula)—desecrating the shrine of Babylon, which is extant on a tablet of very late date (not earlier than the end of the Persian period, the 4th century B.C.) in the "Spartali" Collection of the British Museum, and registered as Sp. 3. 2. The three names appear in a corrupt and obscure form, so that it has been questioned whether we may read them there at all; but Prof. Sayce, in a brilliant and thorough examination of the matter before the Society of Biblical Archaeology, June, 1906 (and since published in the *Proceedings* of the Society), gives a conclusive affirmative to the question.

In two or three other tablets of the same period, and of a similar kind (Sp. 2. 987; and Sp. 158 + Sp. 2. 962), one or more of the same three names also occur. The text of as much of all of these as is preserved, with a transcription of it into Roman letters and an English translation, appears in the *Journal of the Transactions of the Victoria Institute* (for January, 1896), vol. xxix. No. 113, from the pen of Dr. T. G. Pinches.

On the other hand, a contemporary letter of Hammurabi to Sin-iddinam, which Prof. Scheil thought contained the name of Chedorlaomer and a reference to his defeat by Hammurabi, is now generally held to contain neither that name nor reference.

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and entirely trustworthy. The arbitrary subjective "Higher Criticism" now current can produce no such testimony in its favour.

The record of events in the life of Hammurabi, from his early days, when he was in temporary alliance with Chedorlaomer, until his own law became the law of Canaan, is very incomplete. This is illustrated by the historical part (the prologue, chiefly) of the *stela* containing his Code, which is, for the historian, defective. For example, it nowhere claims for Hammurabi any authority in Canaan, nor does it even refer to that land nor to any of its cities by name. It is further to be observed that none of his wars are there spoken of and none of his exploits, outside Mesopotamia (in its larger extent) are even mentioned, except in the most general sort of way. One apparent exception to this statement might appear in the mention of Aleppo, but the explanation of that is either that Hammurabi was directed thither by a Babylonian oracle or because it refers to his executing the laws of Aleppo; either circumstance would bring the event within the scope of the prologue. Even Elam, wars with which occupied him much during the first part of his reign, is not so much as referred to. The subject of the prologue is really the glorification of Hammurabi, as ruler of Babylonia, from the priests' point of view, of his works of peace, and, specially, as a favourer of the temples. But this point of view allows him to be described as "warrior of Dagan, his creator," and, as Dagan was a Canaanite god, there is here an allusion to Hammurabi's connection with that land, and a connection of importance.*

* At the same time, it must not be forgotten that on different occasions, long before this, Babylonian rulers had invaded

But another of his monuments, a stone slab in the British Museum,* tells us plainly of his suzerainty of Canaan in these words: *H̄a-am-mu-r[a-bi] shar Mar-[tu KI]*—that is, “Hammurabi, king of the land of Martu” (*i.e.* of the land of the Amorites, or Canaan). Another inscription preserved in our national museum must be quoted.† It is a late but apparently a quite accurate copy of an original of Ammi-satana (or Ammi-ditana), King of Babylonia, and third in succession to Hammurabi, in which the king gives as one of his official titles, “King of the land of Martu.” This tablet was written well within the lifetime of Isaac, but perhaps after Jacob had returned from Padan-aram to Canaan.

From the later days of Abraham until this time, therefore, Babylon would appear to have had paramount authority in the land of the Amorites. This conclusion is confirmed, and our subject further illustrated, by one of the ancient tablets from Sippara referred to in a note on a preceding page, a tablet which Herr Friedrich‡ assigns to the eighth year of Samsu-iluna, the son and immediate successor of Hammurabi. The document is a commercial contract by which one *H̄abil-kum* hires from another

Canaan, and that some two hundred years earlier than the date of Hammurabi one of the local kings—a *patesi*, or governor, of Assyria—was named Ishme-Dagan, “(the god) Dagan has heard.”

* It bears the registration number 80-11-12, 329.

† 80-11-12, 185. A copy of this, as well as of the last mentioned text, is given by Dr. H. Winckler in his *Altorientalische Forschungen* (Erste Reihe, ii., Leipzig, 1894), and an English translation of the latter text, by Dr. Pinches, appears in the *Records of the Past*, second series, vol. v. pp. 102-5.

‡ The tablet is No. 23 of his *Altbabylonische Urkunden*, No. 562 in Prof. Scheil's list,

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citizen a carriage for a year, agrees to pay two-thirds of a silver shekel for the hire, and pays down one-sixth as the earnest money, but—and this is the feature of particular interest to us just now—he engages not to take the carriage to the land of Kittim. Now, Kittim commonly means the island of Cyprus, but that can scarcely be meant here; it would rather seem to be the Mediterranean coast of Canaan. Why H̄abil-kum engaged not to go there with the hired vehicle we do not know, but because of the inhibiting clause in the contract, it follows that, at that time, people could and did visit those parts from Babylonia, and they had freedom and reasonable security in doing so. This freedom Abraham exercised when he went down into Canaan, and not only so, but he and his children after him, as we have seen, there lived under the provisions of Hammurabi's Code.

Thus extant Babylonian records, practically contemporary with the events recorded, give us sufficient light on the political relationship of that empire with Canaan to assure us that the history of the Hebrew Patriarchs, as given in the Book of Genesis, faithfully reflects the political circumstances of the time. Now, for the writer of that book to have done this, without betraying the least sign that he was conscious of any other purpose than that of recording facts because of their religious importance for his own people, affords, to my mind, striking testimony to the truthfulness of the narrative contained in that book.

CHAPTER II

THE PATRIARCHAL AND MOSAIC LAW

The difference between the civil law under which the Hebrew Patriarchs lived and that of the Sinaitic Covenant.

OUR investigation now advances another stage. On any theory, the Patriarchs of Israel moved in a sphere of law quite different from that in which the nation sprung from them moved, at any period, while it sojourned in the wilderness and lived in the Land of Promise. More especially and most significant is the fact that, while the Patriarchs lived chiefly according to the provisions of Hammurabi's Code, the legislation which purports to be Mosaic, and which is embodied in the four later books of the Pentateuch, does not show a single feature or clause which can be definitely assigned to Hammurabi. On the contrary, as Professor Grimme has demonstrated in the earlier part of this book, what underlies the first civil legislation of Sinai is the customary law of a somewhat primitive Semitic people who have lately forsaken the nomadic condition for the settled life of towns and villages, and whose dominating principle is the protection of the person. The Deuteronomic law shows the same characteristics, but developed by forty years' experience in the desert, and also by forty years' hallowing of the great lawgiver's own life and affected

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by his vision of the future. In the Code of Hammurabi, on the other hand, that feature prevails which is characteristic of commercial communities, namely, the protection of property; it also brings us face to face with a well-developed agriculture and city civilization. The Hammurabi and the Mosaic civil legislation are thus in complete antithesis, corresponding to the circumstances of the two peoples for whom they were enacted: the one was for the great trading emporium of an old country, in which education was widespread, the culture high, and some of it even then ancient, albeit the time of the Patriarch Abraham; while the other legislation was devised for a people making a great national *trek* from shepherd life, enforced field labour, and brick-making in Goshen, to settlement in another land. Thus the civil legislation of Sinai exactly suits the circumstances of the children of Israel at the time, as the Bible brings them before us, as the Code of Hammurabi suits the history of Babylonia of his time; and both are equally to be depended on.

That the old customary law of Semitic tribes—which was, in fact, the law ruling the twelve tribes when, as a nascent nation, they emerged in Sinai—that such was the substratum of the civil laws of the Book of the Covenant, some scholars, such as Dr. J. Jeremias and Mr. S. A. Cook, had already thought to be probable; it is the great merit of Professor Grimme to have proved, in the foregoing pages, that it was such in reality.

Some documentary evidence of this thesis, in a fragmentary form, was to be found in the writings of travellers among the Beduin and of investigators of pre-Mohammadan literature and institutions. But a much fuller body of evidence, and that in a collective

form, was in existence in a long-forgotten book by a patient investigator and practical student, Werner Munzinger. He lived for years among the Bogos of Abyssinia, a Semitic people of half-primitive habits and customs, who were changing the nomadic for settled life in towns and villages, and who were therefore in much the same condition of social organization and civilization as the Hebrews in Sinai, with whom, therefore, their customary law might profitably be compared. Munzinger's work, descriptive of the Semitic people named, and giving a full account of the customs which were the laws of the tribe, was published under the care of a competent scholar, J. M. Ziegler, in 1859; his later contributions to our knowledge of the languages of his adopted country, notably the Barea and the Tigré, are well known to linguistic students. For the rediscovery of the treatise on the Bogos, and the recognition of the importance of their law for comparison with the corresponding parts of the Mosaic Code, we are indebted to Professor Grimme. He may have been led to make this comparison by the opinion he holds that it is to North Africa, in and near Abyssinia (and not to Arabia, as is more commonly supposed), that we are to look for the origin of Semitic language and institutions.* But it is by no means necessary to share that opinion in order to recognize the cogency of the evidence which the common law of the Bogos supplies as to the character of Old Semitic law, and the aptness of the comparison of it with the earliest civil legislation of Sinai, as recorded in the Book of Exodus.

* Prof. Grimme has set forth his views on this subject in his excellent and well-illustrated little volume, entitled *Die Weltgeschichtliche Bedeutung Arabien: Mohammed* (Munich, 1904).

CHAPTER III

EARLY ISRAEL AND CULTURE

Outline of the history of culture in and around Israel, from the Patriarchs to Moses.

Appendix : On the Egyptian personal names in Gen. xli. 45.

BEING thus assured both of the historical accuracy of the patriarchal narrative as given in the Book of Genesis, on the one hand, and, on the other, of the correctness of the reflection of the social condition of the Hebrews in those long-subsequent days of which the inspired record of the earliest civil legislation in Sinai speaks, we may now, in the light of the most recent discovery, attempt a bare outline of the history of culture as it affected the Hebrew people in the interval between the patriarchal and the Sinaitic periods. And, since this scarcely falls within the scope of the Pentateuchal records, we are left to infer what it probably was from the monumental remains of the neighbours of Israel.

When the children and grandchildren of Jacob left Canaan, where Hammurabi's law had long ruled, and made their long sojourn as shepherds and herdmen in Goshen, the pastoral north-eastern frontier of Egypt, they there came into constant contact with pastoral nomad tribes, mostly, like themselves, of Semitic race. But because of their connection with Joseph, the

grand vizier of the land, and as long as the country remained under the rule of the Hyksos or Shepherd-Kings, the culture of Egypt would doubtless have some influence upon them, the children of Israel would be among the *élite* of the tribes, and their more intellectual leaders would maintain a certain literary interest, especially in such traditions of culture and of family and tribal history as may have descended to them from their forefathers, Abraham, Isaac, and Jacob, who were of Mesopotamian origin.

Until recently it might have been supposed that such culture as was preserved among them would have been strictly limited to traditions of a momentous character—such, for example, as of the Deluge, of the Divine covenant made with Abraham, which he was specially instructed to teach his children and household after him,* and also genealogical lore; but our new knowledge of the culture which existed in the ancient world greatly modifies our conception of the ancient East in the period under review. We are now aware that there was great intellectual and literary activity in Babylonia in the time of Abraham; in Canaan, too, some generations later, as testified both by the cuneiform tablets of state correspondence between the different cities and states of Canaan, and their Egyptian suzerain, which have been found in the Pharaonic archives of Tell el Amarna,† and by similar tablets of the same period, though written from a different point of view, which every season's excavations are now uncovering in Palestine itself. And we remember that the stream of literary culture, strong and full, was flowing through Egypt while the

* Gen. xviii. 18, 19.

† Tell el Amarna is in Middle Egypt, on the east bank of the Nile, midway between Beni-hasan and Siut.

dynasty ruled which covered the Tell el Amarna period, and also during the following dynasty (the nineteenth), under which Moses himself lived. This knowledge, most of it acquired by quite recent discoveries, must considerably enlarge our ideas of the culture which surrounded and must have made some impression upon the ancient Hebrews.*

But we further reflect that the Tell el Amarna period fell in the later half of the Eighteenth Dynasty of Egypt, when the children of Israel were sojourning in Goshen. At that time, as the literary culture then prevalent in Canaan had the Babylonian cuneiform script for its vehicle, and as postal messengers were continually passing and repassing between Palestine and Egypt † by way of the eastern part of the

* Since the above was penned, Prof. Flinders Petrie has published his *Researches in Sinai*, in the fourteenth chapter of which, on "The Conditions of the Exodus," especially on pp. 199-206, that distinguished explorer arrives at much the same conclusion as that I here set forth as to the literary culture of the children of Israel and their neighbours at the age mentioned. A similar conclusion has long been proclaimed by Prof. Sayce, and, indeed, cannot now be gainsaid.

† Such postal communication between the two countries continued for some time after the Tell el Amarna period, and as long and in such parts of Canaan as Egypt had political influence and control. A proof of this is found in the fragment of a report to which Brugsch Bey long since called attention (in his *History*, ii. p. 126), as Prof. Petrie has lately reminded us (in his *History of Egypt*, iii. 107). That report was from an Egyptian official on the Syrian frontier, in the third year of Merenpthah, the Pharaoh of the Exodus, and shows that "in ten days there were eight important people passing the frontier, and seven official dispatches, implying much intercourse across the long and forbidden desert" intervening. It was probably in the very next, or else in the second, year after that report was written, that the Exodus of Israel took place; because in the fifth year of Merenpthah that Pharaoh met the Libyan hosts and their allies, who had invaded the Delta, in battle, and, after a great and

Delta, where the Hebrews lived, it is reasonable to suppose that, thus circumstanced, and their own previous history being what it was, some, at least, of the elders of Israel would be acquainted with the Babylonian language and script; this would explain how it is that certain passages in the Book of Genesis were derived, apparently, from cuneiform sources. Afterwards, in the Mosaic period, and somewhat earlier, such of the Israelites as were officers and deputies, especially such as those who kept record of the tales of bricks delivered to the stores and works of the Pharaoh, must have been able to read and write,* as well as speak, both their own language and their oppressors'. Moses himself, as the adopted son of the Pharaoh's daughter, and "instructed in all the wisdom of the Egyptians," must have had an education of no mean order.

sanguinary conflict, defeated them. It would seem reasonable to suppose that the Exodus was connected, though perhaps indirectly, with that invasion and battle, they being part of the Providential operation by which the Chosen Race was delivered from "the house of bondage."

* The word translated "officers" (*shofetim*) signifies "writers," or, perhaps better, "recorders of accounts," or "scribes of legal documents." The root-word is not used in the Old Testament for "to write," for that *katav* is employed; but in the ancient Babylonian (in the Code of Hammurabi, for example) *shafaru* (the root of the Hebrew *shofetim*) is the customary word for writing out legal documents.

As to the use of *shofetim* in Hebrew, it is interesting to notice that it first appears, and frequently, in Exod. v.; thereafter, not till Numb. xi. 16, next in Deuteronomy (seven times), in Joshua (five), and thereafter not until we come to the Books of Chronicles, where it occurs five times, and is translated by "officers." The word, however, twice appears translated differently; once in the Book of Proverbs (vi. 7), where it is rendered "overseer," and once in 2 Chronicles (xxvi. 11), where the A.V. gives "ruler," but the R.V. "officer."

We cannot be surprised, therefore, that extant witnesses of such culture among the early Hebrews speak plainly in the pages of the Pentateuch. The history of Joseph, for example, as its thorough penetration with true Egyptian colour * assures us, would be written, at least in substance, in Egypt. The earlier records of the Bible, its patriarchal history, and at least some of the primitive traditions, appear to have been derived from cuneiform sources; whether such were directly used by Moses, or had been translated into the language of the Hebrews before his time, is a matter which does not fall within the limits of this essay to discuss.

Such, I venture to say, is the story of the survival of literary culture among the children of Israel from the days of their Patriarchs to those of Moses, as modern discovery indicates it to us.† Yet to that culture, it were fatal to forget, special Divine illumination and guidance were needed ere the Book of Genesis, or any other book of the Pentateuch, could have been written.

* The accurate Egyptology of that history is now conceded by all Egyptologists. The late Dr. J. Krall, for example, at the International Congress of Orientalists, held in Vienna in 1886 (*Verhandlung* of the Egyptian-African Section, p. 98, Vienna, 1888), said that every fresh investigation showed the accurate knowledge of Egyptian circumstances possessed by the Biblical writer, and that in all cases where he was thought to be in error, it had proved to be much more the insufficient knowledge of the objector.

The difficulty as to the Hebrew form of the Egyptian personal names in Gen. xli. 45 is treated in an appendix to this chapter (pp. 96-98, below).

† How this culture lingered on in Israel until the period of the Judges was pointed out long ago by the late Lord A. Hervey, Bishop of Bath and Wells, in his Introduction to the Book of Judges in the *Speaker's Commentary*, p. 118.

It is practically certain, however, that such culture would be restricted to the few in Israel. Among the mass of the tribes, as they receded from Canaanite influence, and the favour of the Egyptian Government was succeeded by oppression, their opportunities of culture and interest in it must have grown less and less. On the other hand, in Goshen they would be under direct and constant intercourse with nomad pastoralists of Semite race, like themselves, which must, and, in fact, did, greatly mould them, so that, as the pages of this book show, Old Semitic social organization and Old Semitic customary law, at the time of the Exodus, had become fully their own. But though they had thus come under a lower form of civilization than in the patriarchal period, they could not have quite forgotten their descent from Abraham, and some strands of his faith and of his faithfulness—now, alas! but few and perhaps weak—must have been entwined in the moral consciousness of their moral aristocracy.

Such was the stock and such the condition of culture into which new life was to be breathed by Moses, the wondrously equipped servant of the Lord.

APPENDIX: ON THE EGYPTIAN PERSONAL NAMES IN GEN. xli. 45

THE chief difficulty raised by Egyptologists to the acceptance of the history of Joseph as being, in substantially its present form, from the pen of a contemporary, is that, as is alleged, the proper names as given in Gen. xli. 45, namely, "Zaphenath-paneah,"

"Asenath," and "Poti-pherah," indicate a late date—later, indeed, than the time of Shashank I. of Dynasty XXII.; who was the Shishak who attacked Rehoboam of Judah (1 Kings xiv. 25 and 2 Chron. xii.). This difficulty was elaborated by Dr. G. Steindorff (*Zeitschrift für Ägyptische Sprache*, vol. xxvii., 1889, pp. 41, 42); has been repeated by Mr. F. Ll. Griffith (*Stories of the High Priests of Memphis*, 1900, pp. 1, 2), and by other writers. The subject is important enough to call for detailed examination.

Now, because the exact forms of the names, as they have come down to us, do not exactly agree with any recognized old Egyptian forms (which is not surprising, after they have been copied by generations of Hebrew scribes, to whom ancient Egyptian was an unknown tongue), scholars are left to their own resources to identify the originals behind the Hebrew. But when we consider that the whole narrative is true to the circumstances of ancient Egypt, and must belong to the Hyksos period, it does not seem reasonable to assign the record, nor even the names, to a late date, unless we are driven to do so. Professor Ed. Naville, of Geneva, perhaps the most experienced of living Egyptologists, has shown that, far from being so, the names in question are much more ancient than Dr. Steindorff and others suggest, and suit the time and circumstances of the Patriarch Joseph very well; while the Egyptian originals, which Professor Naville proposes for the Hebrew names, seem to me to be both more likely and more appropriate than those assigned by Dr. Steindorff. Professor Naville's paper on this subject appears in the *Proceedings of the Society of Biblical Archaeology* (vol. xxv., March, 1903, pp. 157-161). The following are Professor Naville's conclusions:—

Zaphenath-paneah is the Hebrew form of the Egyptian *Thest-net-pe-ankh* (Chief of the Magicians or Master of the Sacred College). This word is correctly transcribed by the Hebrew of Zaphenath-paneah, except that *p* is substituted for *t* in the first syllable (*saph* being a common Hebrew syllable, whereas *sath* is not found—at least not at the beginning of a word—throughout the Hebrew Bible). Although the complete name *Thest-net-pe-ankh*

has not hitherto been noticed in the Egyptian monuments earlier than the time of Osorkon II. (Dynasty XXII.), the elements of it are much older—quite old enough, indeed, to have been used by Joseph's lord. The second name, Asenath, is the Hebrew (with the well-known prosthetic *aleph*) of the Egyptian *Senit*, a name borne by a queen of the Sixth Dynasty, and common under Dynasties XI. and XII. While Poti-pherah is the Egyptian *Photēh-ra* (or Rā-ḥetep), analogous to that of a high priest of Heliopolis (and thus a predecessor of Joseph's father-in-law), under Seneferu, the first Pharaoh of the Fourth Dynasty, and whose tomb, and that of his wife, are well known at Médûm. The same name is found in the Hyksos period.

Dr. Steindorff argued that "Zaphenath-paneah" represents an Egyptian *Dēd-pē-neter-ef-ānh*, or, with the second consonant dropped, and other phonetic changes found in the latest (the Coptic) form of the language, *Dē-pnutē-ēf-ōnh*, meaning, "The god speaks and he lives." But, plainly, this word would be somewhat strangely transcribed by the Hebrew (*Šōphnath pa'nāh*); again, instead of the vague words of the sentence, *pē neter* ("the divinity"), we should have expected the name of some particular Egyptian god, such as Ra. Even then the name would lack special appropriateness to Joseph's case, which the name proposed by Professor Naville possesses in an eminent degree. "Asenath" Dr. Steindorff makes the equivalent of *Nes-net* ("Belonging to Neith"), and "Poti-pherah" of *Pētērprē* ("Gift of the Sun-god"), both of which are less likely than the more simple and suitable derivations of Professor Naville.

We are thus reassured of the truth of the contemporaneity of personal names, as well as of the historical circumstances, laid before us in the Scriptural narrative of Joseph.

I should add that the geography of Egypt, as represented in the first pages of the Book of Exodus, exactly reflects the contemporary condition of the Delta as illustrated by the Egyptian monuments. This is shown convincingly by Professor Sayce, in the sixth chapter of his interesting little work, entitled *Monument Facts and Higher Critical Fancies*.

CHAPTER IV

THE HAMMURABI CODE AND LATER ISRAEL

The history of Hammurabi's Code after his period—His legislation was accessible to the legal codifiers of Israel as postulated by modern criticism, but was totally ignored by them.

THE results of our inquiry so far have shown us that there was culture enough among the Hebrews—in particular possessed by Moses—of the period to produce a literature recording their own past and current circumstances, and also, as we may justifiably infer from the long previous promulgation of the Hammurabi Code, and, we may add, from the current legislation of Egypt* in those days, to produce a legal statute-book. The literary material lay to Moses' hand, and developed literary and legal forms for copying. Then came the occasion for employing them. The great national upheaval, whereby the whole twelve tribes left the land of Goshen, never to return to it, but to be henceforward an independent people, and now to make for the Promised Land as their inheritance,—this emergency, as writers of all schools allow, must have necessitated the provision for them of some body of law whereby they should be governed. The circumstances called for it, the culture and the leader

* See *The Inscription of Mes*, by Alan A. Gardiner (Leipzig, 1905).

were equal to it, and these two did not coexist again, in the same suitable measure, throughout the nation's history; indeed, not from the days of Joshua until those of the monarchy could the circumstances and culture of Israel have possibly combined so as to produce the literary substance of the Pentateuch. But as the elaborators of the prevailing "Higher Criticism" of the Old Testament were unaware of the existence of the strong current of literary and legal culture which flowed in the Nearer East from the time of Abraham to Moses, while the record of Israel during the period of the Judges was certainly one of confusion and much barbarism, the elaborators of that criticism imagined that the national civilization of the Hebrews cannot have become in any way noteworthy before the monarchy or the early years of the divided kingdom. Hence, they assign the earliest written sources of the Pentateuch ("J" and "E") to that period. Archæological discovery, as we have seen, shows that their great postulate of a barbarous world, and in particular of a barbarous early Israel, is altogether wrong. Cut off from that ground and starting-point, there is less warrant than ever for the hypothesis that the Pentateuchal Codes are not Mosaic,* but are made up of blocks of legislation, nearly all of a late form, some of them the outgrowths of national custom, some of them merely "ideal"

* Wellhausen, *e.g.*, says, "In truth, Moses is as little the originator of the Law as our Lord Jesus Christ is the founder of the Church order of Lower Hesse." The same incredulity of Moses as the main codifier of the laws of the Pentateuch was expressed by one of his followers in Germany at the very time that the *stela* of Hammurabi was being discovered (see *Moses und Hammurabi*, by Dr. J. Jeremias (Leipzig, 1903), p. 45). But such incredulity is the common property of all the Wellhausen school.

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laws, and practically all of them introduced into "ideal" (that is, fictitious) history.

Yet further objection to such hypothetical origin of at least the civil law, which the Bible attributes, under Divine inspiration, to Moses comes from the discovery and later history of the statutes of Hammurabi. It is a suggestive fact that although the Patriarchs of Israel lived under them, not one of those statutes has definitely affected any enactment of the Pentateuch.

Is it not strange that Jewish scribes, in issuing, time after time—*ex hypothesi*—several bodies of legislation should, for the civil part, have so very carefully avoided introducing any clauses of that renowned Code under which the venerated founders of their nation lived, and which, therefore, would have commended itself to the pious, but instead thereof, and writing for their countrymen long settled in Canaan, should have chosen as a basis the customary law of *ḥadari* Arabs (see p. 59, above), and that without such modification, or at least, explanation, as would appear desirable for their contemporaries?

One of two answers must surely be given to this question. Either the origin of the Hebrew system of law was such as the history in which it is embedded states it to have been, or else, if anything like the explanation built up by the critics is true, that the Hammurabi legislation, in the prolonged period during which laws were being evolved which resulted in the falsely named "Mosaic" codes, was a thing of the past, and no longer recognized by or accessible to Jewish law-makers. We therefore proceed to show that this latter answer to the question does not agree with the facts of the case as we are now acquainted with them.

1. Hammurabi's laws were still well known in

Assyria and Babylonia, when, according to the hypothesis of the critics, the Pentateuch was being composed.

There are in the "Daily Telegraph" and "Rassam" collections of the British Museum two broken tablets* from the library of Ashshurbanipal (King of Assyria, B.C. 667-626), which are inscribed, in cuneiform, with certain ancient laws. Now, some of these laws are identical with sections of Hammurabi's Code, namely, with those sections which precede and those which follow the erased part in his newly discovered *stela* (see p. 24, above), while the remaining sections on the tablets are intermediately placed, and must therefore have occurred on the column where we now see the erasure. It is to be remembered that both these tablets were copied in the royal schools of Assyria at the time that Manasseh was reigning in Judah, the very time when, so the modern critics tell us, the Book of Deuteronomy was being invented to foist upon the nation of Israel as the work of Moses. That the laws of Hammurabi were continuously well known to the scribes of Mesopotamia we have further positive evidence in a broken cuneiform tablet, now in the Museum at Berlin, upon which also are inscribed a series of ancient laws.† Those in the second column are the same as §§ 152, 153, and 154 of the recently discovered *stela*, and the column ends thus: *duppu vii. kam [ni]-nu ilu ši-ru-um*—that is, "7th tablet (of the

* Their register numbers are D. T. 81 and Rm. 277. It is remarkable that the two tablets are complementary to each other, and both help to restore to us the sections erased from the *stela*.

† The register number of the tablet is V. A. Th. 991. See *Jurisprudentiæ Babylonica quæ supersunt*, by F. E. Peiser (Cöthen, 1890), pp. 33, ff. Cf. also *Hammurabi's Gesetze*, von J. Kohler und F. E. Peiser, 1904, Vorrede,

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series beginning) [Ni]-nu ilu[m] ši-ru-um," which words are, literally, the opening words of Hammurabi's *stela*. Thus this tablet of late Babylonian times (not earlier than the captivity of the Jews in Babylon) is a true copy of some of the laws promulgated on the *stela* of Hammurabi nearly two millenniums previously.

A fresh witness to the knowledge, in the later Assyrian period, of Hammurabi's Code *and stela* has just become known. It also is a broken tablet from Ashshurbanipal's library, and now in the British Museum.* The legible portion begins with concluding clauses (277, 278, 279) of the laws, and is then broken off. When the text resumes, in Col. ii., it is at the beginning of the Epilogue of the *stela* (Col. xxiv., l. 17, of the reverse), which was copied right on to the end of it. The colophon following begins, "—5 legal judgments of Hammurabi," and ends with the usual "imprint" of "Ashshurbanipal (King of) Assyria." The entire copy would fill about eight tablets, and thus be of larger form, as well as earlier date, than the series represented in the Berlin Museum.

Demonstrably, therefore, the laws of Hammurabi were known, copied, and studied by the learned classes of Babylonia and Assyria (and, so far as we know, without interruption) through all those centuries, but certainly—and this is the important point for us just now—at the very time when sceptical critics would have us believe that the priests and prophets of Israel were concocting a pseudo-Mosaic legislation.

* Bu. 91-5-9, 221, published in plates 46 and 47, Pt. XIII., of the *Cuneiform Texts*, etc. I hope shortly to publish a transcription and translation of the text, which hitherto have not been made. As to the numbering of the clauses of the Code, see p. 132, below.

2. We have now to see that such concoctors, if they ever existed, must have had opportunities of access to those laws. A very brief sketch of the political relationship of Assyria (which predominated over Babylonia most of the time from Moses until some twenty years before Daniel and his compatriots were carried to Babylon) with Palestine (in its larger extent—that is, including Phenicia, Philistia, etc.) will enable us to see that they must have had such opportunities.

We will begin with the time of Ashshurbanipal,* upon whose connection with Palestine a beam of light has just been thrown.

In the course of excavating in a comparatively late stratum of the site of ancient Gezer,† for the Palestine Exploration Fund, in 1904, Mr. R. A. S. Macalister unearthed a cuneiform tablet which was, in every essential respect, the same as tablets which were then being made and inscribed in Assyria itself; only a skilled Assyriologist could tell that it was really made and written locally—that is, in Palestine. It was not only written in Assyrian cuneiform characters, but in the Assyrian language, sealed with the seals of witnesses in the legal Assyrian form, and bore the usual Assyrian *data*, which showed that it was written B.C. 649. Short as the document is, it contains more than a dozen proper names, most of them good Babylonian or Assyrian names. It is therefore clear that Gezer at that time was, or, at least, that it contained, an Assyrian colony. It was, in fact, an outpost of the

* Ashshurbânipal is thought to be referred to in Ezra iv. 10, as “the great and noble Osnappar.”

† See Josh. xvi. 10; Judg. i. 29; 1 Kings ix. 16, etc. The site of Gezer lies between Jaffa and Jerusalem, some eight miles south-east of Ramleh.

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Assyrian power, and no doubt the most southern of a chain of such outposts which ran through Palestine, as Ashshurbanipal's father, Esarhaddon,* had, in B.C. 670, conquered Egypt, which had been held, and therefore also a way to Egypt through Palestine must have been held, by Assyria until two or three years before the date of this tablet. At that time Egypt cast off Assyrian suzerainty; though the parts of Palestine and Phenicia which were subject thereto had not cast it off. This condition of things was previously known from other sources, which the recently discovered tablet strikingly confirms.

Now, in B.C. 649, the year in which this tablet was made and written in Southern Palestine, Manasseh was reigning in Judah; it was the 37th year of his reign.† Some fifty-two years earlier Hezekiah had lost, temporarily at least, a number of fenced cities and paid tribute, to Sennacherib; ‡ also, for some time before Hezekiah came to the throne, his father, Ahaz, with his court were simply dominated by Assyrian influence. In the kingdom of the Ten Tribes the influence of Assyria was still more potent than in Judah and more long standing. After being several times defeated in battle by Assyria, and portions of its people deported, at length, in the sixth year of Hezekiah of Judah, the Ten Tribes ceased to exist as a nation, were transported into Assyria and Media, and the mongrel Samaritan people occupied their land.

* Who is spoken of in 2 Kings xix. 37.

† This is easily calculated. The date usually assigned by Assyriologists to the invasion of Judah by Sennacherib is B.C. 701; that was in the 14th year of the reign of Hezekiah, who reigned fifteen years longer, and was succeeded by his twelve-year-old son, Manasseh. So that the year B.C. 701, less fifteen years and thirty-seven years = B.C. 649.

‡ 2 Kings xviii. 13-16.

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These are more or less typical proofs of the political influence of Assyria upon the children of Israel—influence which must have carried with it commercial, social, and literary influence likewise. In this same period, as we have seen, Hammurabi's laws were known and were being copied by the learned classes of Assyria, and therefore there would seem to have been nothing to have prevented such of the Hebrew scribes and influential classes as were interested in such matters from becoming acquainted with them; especially when Jewish kings and leading men were politically leaning upon Assyria or Babylon. Hammurabi's Code must certainly have been known to the Prophet Daniel,* who, when living "in Shushan the palace," which was then "in the [Babylonian] province of Elam," must, with his own eyes, have often looked upon this very *stela* of Hammurabi's which was then standing in the acropolis of Shusan, where the French expedition disinterred it in December, 1901, and January, 1902. Doubtless, also, he must often have seen and handled copies of the laws of the Code in his earlier years, when he lived in Babylon itself, and was a by no means obscure member of its learned classes. Moreover, in the general captivity of his people, many other Jewish scholars, because of their intimate commercial and other relations with the Babylonians among whom they lived, were certainly in the way of hearing of that Code. How strong the probability is that such was the case we see when we remember that many Babylonian legal tablets of that period, excavated by the expedition of the University of Pennsylvania and published by Dr. H. V. Hilprecht,†

* Whose book has a strong Babylonian tinge, which most modern critics very inadequately recognize.

† In vol. ix. of the official reports (Series A).

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contain many Jewish names. This is positive evidence that the Jews were not only living under but were also personally involved in legal transactions with Babylonians, who still were influenced by, copied, studied, and praised, the laws of Hammurabi.

These facts all tend to show that his legislation was accessible to the learned classes of Israel at the different periods which the critical school referred to assigns to the composition of the Pentateuch, and, having been the identical law under which Abraham, Isaac, and Jacob lived, would have commended itself to the Jewish nation, particularly to the pious, and therefore to priestly and prophetic writers who sought to impose upon their countrymen systems which they pretended were Mosaic. That all these considerations should have been ignored, and, without the slightest suggestion of explanation, instead of Hammurabi there should have been adopted as Mosaic, by civilized Jews of a kingdom, a basis of Old Semitic customary law which was, fundamentally, the law of despised, Beduin marauders, is, in the light of present-day knowledge, in the highest degree improbable, indeed inconceivable. If, however, the Pentateuch is a true record of the history and legislation of the early days of Israel, that record carries its own proper explanation with it.

CHAPTER V

ARCHÆOLOGY AND THE MOSAIC RITUAL

The Ceremonial Law of the Pentateuch and modern archæological discovery—The inscriptions of ancient Arabia and the monuments of the Sinaitic Peninsula.

THUS far we have spoken only of civil legislation, which is all with which Hammurabi's Code deals ; but in a book discussing Mosaic Law something should be said on the religious legislation which bears the name of Moses, which occupies a very considerable part of the Pentateuch, but which the prevailing school of modern criticism declares to be of very different origin, and nearly the whole of it of very different date, from what the Bible itself assigns.

Laws respecting the religious ordinances, ceremonial, and life of ancient Israel ; the building and furniture of the national sanctuary and the arrangements for carrying these when the tribes were on the march ; the religious feasts, fasts, offerings, and ritual ; the classes set apart as priests and their helpers, and the regulations for both,—these things (which necessarily form a very large part of the Mosaic legislation, since the national life began and was to be built upon the basis of a religious covenant) do not come up for detailed comparison in this book. But concerning

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them I would say, briefly, that some of them developed naturally from the circumstances of the people. Take, for example, the Tabernacle of the Congregation, or, more correctly, the Tent of Meeting, of Exod. xxxiii. 7-9. This, which was Israel's sanctuary until the Tabernacle proper was constructed, was only an ordinary tent, apparently "the tent" of Exod. xviii. 7—that is, the private tent of Moses; just as the first Christian "churches" were the private rooms of the primitive Christians. Other religious externals were similar to, and some founded upon, what the children of Israel were acquainted with as used among neighbouring peoples. Some of them certainly were similar, in their broad features, to what were in use in Babylon, but, it is specially noteworthy, very few indeed of the religious terms of the Bible, even for common religious acts, are derived from ancient Babylonian,* although the father of Israel emigrated from ancient Babylonia, and both peoples spoke a Semitic language. We are not, therefore, entitled to assume a Babylonian origin for any Mosaic ceremonial unless that ceremonial, while used by the Babylonians, was not to be found among nearer neighbours of the Israelites in the days of Moses.

Similarities of outward forms in religious worship, in ceremonies, officers, rules, furniture, various arrangements, and even in nomenclature, as given in the

* This is shown conclusively, and in fulness of detail, by Mr. Robert Dick Wilson, in an article entitled "Babylon and Israel: a comparison of their leading ideas based upon their vocabularies," in the *Princeton Theological Review*, April, 1903 (Philadelphia).

That Babylonian law terms are not found in the Hebrew civil law Prof. Grimme has already conclusively shown (see p. 76, above).

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Pentateuch, we also find, to some extent, in the extant remains of Egypt and other neighbours of Israel. But when we remember the gross polytheism of Egypt, the enmity which the oppression of the rulers of that land caused to grow up between it and Israel; and when we remember, on the other hand, the refuge and home which for forty years of his early manhood Moses found with Jethro, the priest of Midian; how the friendship between them both was renewed after the Exodus; and the very considerable influence which Moses allowed Jethro to exercise on his magisterial arrangements for the Twelve Tribes; * moreover, that the friendly and neighbourly influence of Midian upon Israel was continued, to some extent, through Hobab, who probably was Moses' brother-in-law, and the Kenites,†—when, I say, we remember all this, we might reasonably expect that Midianitish ritual would have considerable influence on the Mosaic; the ritual, but not the theology, for the Hebrew faith came by Divine revelation.

Modern archaeological investigation seems to confirm that expectation in a remarkable way. Professor Grimme, as well as other scholars, believes that the most important source of the religious ceremonial of the Pentateuch is indicated in the ancient inscriptions of Arabia, which have been brought to light in recent years. In view of what Professor Grimme has written (see pp. 50, 51 above), it may be well, for

* Exod. xviii. In Deut. i. 9-15 the appointment of the subordinate magistracy under Moses is spoken of without any reference to Jethro; but it was sufficient for that occasion, and more befitting it, that only Moses and the people of Israel—who fully accepted Jethro's advice, and were, therefore, responsible for the results of it—should be mentioned.

† Numb. x. 29-32 and Judg. i. 16. Cf. also Judg. iv. 11-17 and 1 Sam. xv. 6.

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various reasons, but especially because of its great importance for Biblical criticism, to give here some particulars of that new branch of study.

Inscriptions of ancient Arabia have long been known; they are of various periods and dialects. One of the series, the Nabatean, is comparatively late, ranging from a few decades B.C. to about A.D. 100; one of the Nabatean rulers whose inscriptions have come down to us is the "Aretas the king" (Aretas IV.) mentioned in 2 Cor. xi. 32. But with those inscriptions we have here nothing to do. What Professor Grimme refers to are two series of a much earlier date, formerly called Himyaritic, but now known, from the ancient Arabic kingdoms they respectively represent, as the Minean and Sabean. The one dialect, the Minean, was spoken in the kingdom of Ma'an or Ma'in, and a large number of its kings* are mentioned in the inscriptions. The Mineans, of whom Strabo speaks, Dr. Ed. Glaser and Professor F. Hommel believe to be the Maonites of Judg. x. 12; while the Septuagint, as has been pointed out, describes Job's friend Zohar, as "King of the Mineans" (Job ii. 11). The Sabean inscriptions apparently come later than the most brilliant Minean period; the earliest of them cannot be placed before the eighth century B.C. The Sabean rulers were then priest-kings (*mukarrib*), and the Queen of Sheba, who visited Solomon, would belong to a preceding era of the same (Sabean) people. Now, the inscribed Minean monuments, as Drs. Glaser and Hommel, Sayce and Grimme believe, preceded the Sabean, and it is claimed that the religious organization of the temples of ancient Arabia, as revealed by

* More than thirty, but some of these may have been contemporary; compare Numb. xxxi. 8.

these inscriptions, may have been the source of many of the forms of the ceremonial law of the Pentateuch, as Professor Grimme indicates in his treatise.

But although the opinion of the high antiquity of the Arabian inscriptions held by Professor Grimme is shared, as we have seen, by other scholars of great learning and experience, including some who have the most intimate first-hand knowledge of the inscriptions in question, it is only right to recognize that many scholars, in England and elsewhere, regard those inscriptions as of much later date than is here assumed. The strength of their argument lies in this, that whereas the high antiquity of the inscriptions rests upon palæographic and other inferences, there are two Minean inscriptions which seem to directly contradict those inferences. One of these inscriptions is a long one upon an Egyptian sarcophagus, now in the Museum of Cairo, and the date it bears is very late indeed, viz. in the time of one of the earlier Ptolemies, probably Ptolemy Philadelphus (B.C. 285-247).^{*} But this inscription, Dr. Hommel points out, is evidently in late Minean style; moreover, its contents show that its writers had no connection with any Minean kingdom, but were only members of the tribe or colony immediately under the protection of Egypt. All that this inscription can be fairly claimed to prove with regard to date is, therefore, that at the time mentioned there were people living who wrote a Minean dialect.

The other Minean inscription referred to is a more important witness. For the political and geographical references contained in the inscription do seem,

^{*} This Minean text, with transliterations and English translation, is given by Prof. Hommel, in the *Proceedings of the Society of Biblical Archaeology*, March, 1894.

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as Dr. E. A. Wallis-Budge contends,* to point to the war between Cambyses and Psammetichus III. (B.C. 529). Moreover, the inscription apparently belongs to a time when the Minean kingdom was flourishing. The question therefore arises, Does this date, if it be the true one, nullify Professor Grimme's argument that ancient Arabian religious ceremonial was a chief source of the *outward forms* of the ceremonial law of the Mosaic Pentateuch? By no means. It would certainly nullify the *demonstrative* force the argument has if the Minean temple system was contemporary with Moses, but if it should be proved that such system did not originate until much later than the Mosaic period, the argument remains intact as a rebutter of the extraordinary hypothesis of "the Higher Criticism," that the Ceremonial Law of the Pentateuch dates, in much of its substance and wholly as a system, from the period of the Exile, only terminating with Ezra. For it shows us that the Old Arabian temple system, with its very considerable analogies to the Pentateuchal ceremonial, was in full force in the sixth century B.C. (when Persia was the dominating power of the world), when the long-standing and only occasionally dissipated enmity between Israel on the one hand, and Midian, Moab, and all the Arabian tribes on the

* In the Preface to the sixth volume of his *History of Egypt*. The inscription is numbered 1155 in Dr. Glaser's list, No. 535 in M. Halévy's; the text of it is lithographed in Dr. Hommel's *Süd-Arabische Chrestomathie* (Munich, 1893), also in his *Aufsätze*, etc. (Erste Hälfte, 1892, pp. 124, ff.).

Dr. Budge's satisfactory refutation of Dr. H. Winckler's conjecture that there was a kingdom of Mutsri in Arabia (besides the two well-known Mutsris, namely, Egypt and a land in North Syria), is not dependent upon the date of this Minean inscription.

other, was deep and bitter.* How, then, at such a time, could priestly romancers of Israel (such as the criticism presupposes) have gone to *that* stock for their religious ceremonial?

But the ancient Arabian temple worship is admitted on all hands to have been flourishing at least by B.C. 529, and it must then have had a history behind it. One of two things had happened—either it was developed from within, or obtained from without. If the latter, it is not unreasonable to suppose that many of its forms were obtained from the Hebrews; a special indication of its Hebrew derivation would appear in the name of “Levites” † given to a certain

* *E.g.* With the *Midianites*, at least the section of them who were nearest neighbours to Canaan, such enmity is shown from the time of Balaam until they were nearly exterminated by Gideon (Judg. viii. 28), and thereafter practically disappear from historical contact with Israel. With the *Moabites* there was an even greater estrangement than with Midian, save for a few decades of friendliness in the early years of David and the time immediately preceding. Solomon, it is true, introduced some of its women into his *haram* and their worship to Jerusalem, but the latter became stigmatized for ever as “the *abomination* of Moab” (1 Kings xi. 7). The Ceremonial Law of the Hebrews, it is plain, could not, after David’s earlier years, have been much affected by Moab.

The relation of Israel to Amalek, the Ammonites, and Edom was much the same as to Moab and the Midianites.

No doubt, during part of Solomon’s reign, there would be currents and counter-currents of religious influence between Israel and its neighbours, but that date would suit the hypotheses of the critics as little as the earlier traditional period; moreover, it could scarcely be fitted into the histories of Kings and Chronicles, and it has yet to be shown that the writers of those books knew less of the periods they chronicle, or that their records are less trustworthy, than are nineteenth and twentieth century re-modellings of their histories.

† Otherwise, the word may have had more the sense of the classical Arabic *laṭwā* or *la’a*, meaning he who endures hardship

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class attached to the Old Arabian temples.* But that derivation must have begun long before to account for the considerable modifications made in Arabia; we might suppose it to have begun about the time of the Queen of Sheba's visit to King Solomon, at which time also the Israelites had a naval depôt at Ezion-geber, on the north-east head of the Red Sea, and so there would be much contact between them and the Sabeans. If at that period the Pentateuchal system was the recognized ritual of Israel (and the Bible teaches us it was), the whole hypothesis of the Graf-Wellhausen school of critics tumbles to the ground.

But if, on the other hand, the Old Arabian temple worship was indigenous, it must have had a long antecedent period of development, and reason has yet to be shown why the framework of it may not have existed among the Midianite Semites when Jethro, Moses' father-in-law, was their high priest. The interval of time cannot be considered too great when we reflect that the period from Jethro to the days when, as all allow, the Old Arabian temple worship flourished, was but a fraction of that which intervened between the legislation of Mount Sinai and the record by Munzinger of the customary law of the Bogos in Abyssinia, which has so much in common with the civil law of the so-called Book of the Covenant.†

(as the hard manual and menial labour of the temple, or in the sense of a *fakir*).

* Prof. Grimme informs me that the N. Arabian male and female levites, in the inscriptions of El-Öla, do not appear in any way as a priestly class, but are always named in close connection with such persons as were dedicated (*sibrār*) to the service of a temple. So they must, in the first instance, be regarded as pledges (cf. the Heb. *lawa*, "to lend"), which those dedicated gave over to the temples.

† The following translation by Prof. Grimme (which I render into English from the *Orientalistische Literatur-Zeitung*

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Yet more recent archæological discoveries, to wit, those of Professor W. M. Flinders Petrie in the peninsula of Sinai (December, 1904, to March, 1905), indicate to us that the Pentateuch bears evidence in its pages as of a substratum of Old Semitic civil law, so also of Old Semitic religious ceremonial which influenced the patriarchs of Israel and retained a modified place in the Mosaic Code; while ancestral superstitions and degrading practices, which were forbidden by the inspired lawgiver, had a deep, if secret, hold upon the hearts of many in Israel, and they, as well as idolatries of nations within and influencing Canaan, again and again asserted themselves in the life of the Chosen Race.

Professor Petrie's investigations in Sinai disclose that there were in use there, not only as early as the

of May, 1906) of a decree of one of the Old Arabian temples will, in spite of some obscurities, be of interest as illustrating something of the character of these inscriptions; this one, Prof. Grimme thinks, may belong to the period of the early Sabean kings. It was copied by M. Halévy in Haram, and he numbers it 152. It apparently consisted of seventeen lines, sixteen of which are well preserved:—

“Whoso enters the temple precincts must lay down his weapons far from (the god) Halif, then seeking shelter he may draw near or enter in order to obtain an oracle. When forsooth his weapons are discovered, and blood-guiltiness is in his train, he shall pay to the head of (the temple community of) Attar and the priests ten *hai'il*; but if he is not blood-guilty he shall pay five *hai'il*. If any one drives away a fatted calf out of the temple radius he shall count out five (calves) of equal value, and whoso consumes a portion (of the calf) shall pay it back in full. A man who purloins food from the temple radius shall compensate for one of the small cattle an ox, and for a measure (of corn) of the temple radius a larger measure. For watered curdled milk and comb-honey and cakes he shall defray the cost for all people (of the temple). This ordinance shall be of force for ten years, beginning with the month *Du-s-l'm*, of the time of the sacrificial service of *Ilsad*, overseer of *Hali'at*.”

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time of the Exodus (during the Nineteenth Dynasty of Egypt), but even as far back as the Twelfth Dynasty, altars of incense, anointed sacred stones,* and tanks for ablutions or religious purification, while many tons of wood ashes, which still remain heaped together in the temple precincts of Serabit el Khadem, testify to burnt offerings there made; and all of this religious ceremonial (which involved ceremonial law) was not according to ancient Egyptian, but according to ancient Semitic usage.†

So, then, as the Old Semitic world supplies us with the substratum of civil law, so does it furnish us with the substratum of religious ceremonial upon which, as upon a natural basis, and (to speak "after the manner of men") in accordance with the *necessary* analogy of God's dealings with mankind, He reared, supernaturally, the Mosaic dispensation.

* Since Jacob, appropriating an ancient practice, raised and anointed the stone he had used for a pillow at Luz, when the heavenly vision was vouchsafed to him, and called the place Bethel, anointed sacred stones are often called "Bethels."

† Prof. W. M. Flinders Petrie, *Researches in Sinai* (London, 1906); particularly chapters vii., x., and xiii., and plates 93, 94, 142, and 143.

CHAPTER VI

MOSES AND ISRAEL

The historical turning-point of the Mosaic period—The personality of Moses—A Divine element in the Mosaic legislation, as in all Scripture.

THUS far, we have seen that modern discovery makes probable the consistent traditional date of the Ceremonial Law, and proves the historical character both of the narrative and also of the civil law of the Pentateuch. To the factors in the recovery of the natural conditions under which the Pentateuchal codes originated we must now add other two, one at least of which has been more than once referred to in these pages; * they are Moses himself and the turning-point in history in which he appeared.

First, the age of Moses was the age of travail of a new nation, the nation of Israel, whose mark on the subsequent history of mankind has been very deep and lasting—a nation, indeed, which still powerfully influences the modern world, intellectually, financially, and politically. No single race has, not even all other races put together have, made contributions so great, so enduring, so effective, and of a potentiality still untold, to the moral and religious history of the world as the nation of Israel has made, and that

* See above, pp. 50, 51, 88, 94, 96, and 99.

never could have been but for the national home and school which the Promised Land afforded it. The age of its deliverance from Egypt and passing into that land was, therefore, a turning-point in human story as well as in that of Israel, and one marked with the fulfilment of cherished promises made to the fathers.

And next, as to the leader of that deliverance, Moses. Periods of crisis necessitate a leader, one who shall be both the offspring of his time and the shaper of its history; while both ages and leaders are prepared by God. As the Mosaic age was a crucial point in history, so Moses was its prepared, competent, and efficient leader. By Divine providence he was fitted for his literary and administrative work by being educated, from infancy, at the court of Pharaoh at a period of ripe culture; he was versed in ecclesiastical matters, of his own Semitic type, during the forty years he served and by marriage became one of the family of the high priest of Midian; during those same forty years he was becoming personally disciplined, and was acquiring that intimate practical knowledge of the desert and of the requirements of shepherding there, which would stand him in such good stead during his leadership of his own people, who also were pastoralists in that same wilderness. The full and manifold preparation thus Divinely allotted to Moses was manifestly ideal for the great work for which he was being prepared. His natural temperament—patriotic, indignant at wrong, compassionate to the oppressed, yet patient and meek—co-operated the same way. He was thus a devoted, experienced man of affairs as well as a competent man of letters. Comparable in versatility and power to Hammurabi, to our own King Alfred,

to his own later countryman King David, yet his mission was greater than any of theirs. Placed, at a peculiarly trying juncture, at the head of the tribes of his people, first to effect their delivery from intolerable oppression and tyranny, then to lead them to the somewhat severe but safe conditions of the desert; to be as a father to them, the law-giver and organizer of their corporate life and church during the long years of disciplinary wandering, until they should be prepared to take and to make their inheritance in the Land of Promise,—all this, as it gave Moses a uniqueness of opportunity, established also the uniqueness of his position, and made his mark on his nation and on the world unique and lasting also. Hammurabi was the founder of the Babylonian empire and first codifier of Babylonian law; but his work and influence, as they were ever independent of, were very far from parallel with those of Moses.

And then there was a supernatural element in Moses' life and work which did not exist in Hammurabi's, but which was manifest in the life and work of all the writers of the Old and New Testaments. For it is most significantly true that the essential character, distinctiveness, and value of the Mosaic institutions was not, of course, that they lacked the social and legislative development exemplified in Hammurabi's Code, nor, positively, that they amply recognized Old Semitic customary law and religious ritual; no, nor even the suitability of those institutions to the social and economic circumstances of the Twelve Tribes when organizing for the Promised Land. Not those things but its powerful religious doctrine was the characteristic, *par excellence*, of the Mosaic legislation and record. We note some points

in its unique character : its pure, unbending monotheism. Its revelation—or, rather, its re-revelation—of a righteous and holy God, jealous for His own honour and His people's purity ; a God who hates all idolatry as debasing and deadly sin, yet who graciously drew nigh unto and entered into covenant relationship with the nation for whom Moses legislated, namely, for the descendants of that convinced monotheist from Babylonia, Abraham, whose sublime and simple trust in Him has been a model and an inspiration to men through all the ages since. We note also that by that covenant in the fulness of the times there was to emerge the new and better Covenant in which all families of the earth should be and are being blessed. As we consider these things and their stupendous issues, which are to culminate in the regeneration of the world, we cannot wonder that God should have called Moses to his great work by the miraculous appearance at the Burning Bush ; that by many signs and wonders He should have delivered the Abrahamic tribes from the bondage which thwarted their heritage of grace ; and that the proclamation of His Covenant to the new nation and of the fundamental laws which should rule it, should have been inaugurated by the great Theophany of Sinai,—so awe-striking and yet so marvellously in accord with that momentous event in the life of the Chosen Race and of all mankind.

The Mosaic dispensation, its laws and institutions, was thus developed out of the circumstances and conditions of the time, but by Divine revelation, inspiration, and guidance.

Now, the evolution of its outward forms from actual contemporary conditions is what we ought, rightly and reverently, to have expected. We ought not to have expected the Mosaic system to have been a miraculous

entity, a totally strange and marvellous thing which appealed to no knowledge, use, or custom of the people to whom it was given. Such, so far as we know, never has been God's way of working among men. The Saviour of the world, in the days of His flesh, taught even His closest followers just as they were able to bear it,* and His special teaching to them and to the world started from the common things around them. The Hebrew prophets spake and taught—as they were “moved by the Holy Ghost,” certainly, but yet—according to the customs and understanding of their generation. So, too, it was in the Covenant legislation of Sinai: it started from the class and clan organization of the Twelve Tribes, from their own customs, and from the knowledge of what was going on around them, especially among those with whom they had sympathy and relationship. The words of Dr. Wace,† the present Dean of Canterbury, have here a peculiar appropriateness. “The inspiration of the Divine Law-giver,” he says, “was exerted, in fact, not in creating an entirely new social order, but in illuminating and transforming, by positive Divine commands, the state of life which already existed. Nothing more consonant with the methods of Divine inspiration and education, as exhibited in later history, could well be conceived.”

Thus while the line of thought here taken is, as I believe, fully as “natural”—that is to say, as fully in accord with our common experience, rather would I say with the analogy of God's dealings in history—as is the line of argument taken by the Rationalistic

* John xvi. 12.

† In the Preface with which he honoured me by contributing to a little book which I translated from the German of Prof. Edward König, entitled *The Bible and Babylon* (1905).

critical school, it does what that cannot do, namely, it justifies, in the main, the trust which the Church of God on earth has, and must have, in its own literary and historical sources, as being specially given by Divine inspiration ; no other book having been thus given. The prevailing critical school undermines such trust. But while our line of argument, based on the most recent advances in real knowledge, gives satisfactory reasons for the Christian student to accept the "writing" or "Scripture of truth,"* as fully authentic and trustworthy, and not as merely "ideal" in its statements, yet the *vital* value of the Scriptures, that which makes them really "Holy Writ" and "the Word of God" to any soul of man, is faith,—Divinely originated, Divinely illumined, and Divinely led. This, of course, lies without the limits of merely literary criticism or archæological proof, but it is the touchstone and the safeguard of Christian knowledge and criticism now as much as it was in Apostolic days.

* Dan. x. 21.

CHAPTER VII

LEVIRATE MARRIAGE

The law of levirate marriage: an additional application of Professor Grimme's method.

THE comparison of another instance of Pentateuchal legislation, one which lies outside the Book of the Covenant dealt with by Professor Grimme, with Old Semitic customary law on the one hand and Old Babylonian on the other, may be usefully subjoined; the instance is that of levirate marriage.

The enactment about it is given in Deut. xxv. 5, ff., but that is a modification of a customary law of Israel in the patriarchal period (Gen. xxxviii. 8, 11). The substance of the law, in both places, is that when a man died without seed his brother should marry the widow in order to raise up a posterity to the deceased.

Now, according to the testimony of the most recent English traveller, who is also a most experienced sojourner, among the Arab tribes of Sinai, Mr. W. E. Jennings-Bramley: * "Although they (the Beduin)

* "The Beduin of the Sinaitic Peninsula," in the *Quarterly Statement of the Palestine Exploration Fund*, July, 1905, p. 218. Mr. Jennings-Bramley was, in the early part of 1906, appointed by the Egyptian Government to be commandant and inspector, "with full control" over the affairs of the Sinaitic Peninsula.

seldom have more than one wife, in the case of a man dying and leaving a widow, his brother is bound to marry her, and to look after her children, if she have any." This case at once suggests analogy with the levirate marriage of the Pentateuch, yet all that is common to both is that, for family and perhaps tribal reasons, a man was bound to become husband to his brother's widow. That law, therefore, is evidently Old Semitic custom, and upon it the Hebrew law would be based. That it is Old Semitic is confirmed to us by the fact that it is in force among the Bogos. According to § 107 of Munzinger's treatise, if a man dies before marriage, his father or his brother takes over the marriage right of the deceased with his betrothed, without either new contract or customary payment to his father, who had no right of objection. By § 108, if a married man dies, a son by another marriage, his brother, or other nearest relation, has the right to the widow, without reference to her father. Betrothal counts as marriage, and the brother, or other next of kin *inherits* (as is expressly stated) the brother's wife or espoused. The widow may remain in her late husband's or go back to her father's house, and for a certain period—from forty days to a year—is at the claim of her husband's brother or other next of kin; if at the end of the customary period he shows no desire to marry her, she is free to marry any one she chooses.

Thus we see that among the Sinaitic Beduin and the Bogos *hadari*, as among the Israelites in both the patriarchal and Mosaic periods, the custom has prevailed of the brother marrying his deceased brother's wife; it is thus an Old Semitic custom. But the circumstances of each group of people give it a different aspect. Among the wandering Arab tribes it

is chiefly considered as a means of protecting a woman and any young children she may have; among the Bogos clans adopting a settled life it is looked upon as a privilege, and, to some extent, a responsibility of inheritance; in Israel it was a duty (from which, however, he was exonerated if he lived away) of a surviving brother (or other next of kin) to the family name and heritage—about which I will say more presently; whereas in the settled and highly civilized Babylonia of Hammurabi's time the custom of levirate marriage was not recognized by the Civil Code in any sort of way, but, on the other hand, it provided the widow with at least a settlement and a life interest in her deceased husband's estate.

The peculiar features of brother-in-law marriage in the law and custom of Israel call for remark. That which is peculiar to the Deuteronomic law is for the same evident purpose as that other enactment of the same period, namely, the law about daughters succeeding to landed estate, which was made, in the first instance, for the daughters of Zelophehad,* to

* Numb. xxvii. 1-11. For the legal significance of this event, see an article by Mr. H. M. Wiener, a Jewish barrister, in *The Churchman*, May, 1906. A book by the same author, entitled *Studies in Biblical Law* (London, 1904), should be carefully read by any serious student who is impressed by "the Higher Critics'" plausible analyzes of the Mosaic Codes and the apparent detection of different renderings of the same law, and of post-Mosaic conditions reflected in them. On that subject it may here suffice to say that from lack of legal training, or perhaps from lack of care and consideration in reading the terms of Pentateuchal enactments, laws of very different purport are often confused, and a meaning is read into them which they were not meant to bear. Mr. Wiener has supplemented his book by later contributions to *The Churchman* than that referred to above.

The incident of Zelophehad's daughters, it may be observed,

wit, the preservation of each family's inheritance. Zelophehad had died without son, his daughters formally inquired whether, because of that, his name should "be taken away from among his family;" were not they entitled to preserve it and to receive his inheritance when the allotment of the Promised Land was made? While what distinguished the levirate law of Israel (as expressed both in the Book of Deuteronomy and, as recognized by Jacob and his sons, in the Book of Genesis) from similar legal customs among other peoples was the special object of raising up seed to a deceased brother, in order that his name should not become extinguished among his people.

This distinctive object of the law at once prompts the inquiry, Why this special and avowed care in Israel for name and seed? For my own part, I cannot but recognize in it a token that the parental desire was strengthened and acquired hereditary force in Israel because of the promise made to Abraham that in his seed all nations of the earth should be blessed, and because the protevangelium was upon record among them, that the seed of the woman should bruise the serpent's head. These two great and mysterious promises were the first cause of the ineradicable belief

suits well with the historic circumstances of the Chosen People about to enter upon the Land of Promise; it needs, I think, peculiar vision to see in it any practical value as an invention of Jewish scribes (labelled "P") exiled in Babylon. Similarly, the levirate enactment of Deut. xxv. suits well the testamentary legislative Code or summary of the venerable lawgiver ere he passed away and his people entered Canaan; but what is its value or meaning as "the prophetic re-formulation and adaptation to new needs" (as Prof. Driver, with special reference to "the Deuteronomist," explains the principle involved) of Israel in the period, "approximately," of the Babylonian Captivity?

of Israel that it was an elect race. How much, then, depended upon the family life! and how deeply might men and women in Israel indulge the hope that through their own family life they might have a special part in the fulfilment of the great promises to their nation! Furthermore, the levirate law of marriage was among the legal arrangements of Israel which called for care in recording and preserving family genealogies; in some circumstances it might even have the value of family insurance, of which, incidentally, the Book of Ruth supplies us with a specially interesting instance. My readers will not take it amiss if I add that the richest and ripest fruit of the care in preserving family genealogies in Israel is reached in the record of Luke ii. 4, 5; v. 23, ff., whereby we see, in a wonderful way, the working of Divine providence in the history of the Chosen Race; and see also clearly that it was the Holy Spirit of "the High and Holy One who inhabiteth eternity," who inspired Hebrew lawgiver and prophet, through whom He wrought out His great purposes for mankind.

CHAPTER VIII

HAMMURABI LAW IN MODERN PALESTINE

The practical working of a section of Hammurabi's Code illustrated by the law of Palestine now.

THIS series of chapters may be brought to a close by an illustration, from the law of Palestine now current, of the way in which the principle of one of Hammurabi's laws would work in practice.

In § 23 of his Code, Hammurabi decreed that in a case of highway robbery or brigandage, when the banditti escaped, the man who had been robbed should make a declaration of his losses in the temple of the local god, and the township within whose borders the place lay where the act of brigandage had been committed, and its governor (*rabianu*), should fully indemnify the man for his loss; while if the man's life had been taken, the city and its governor should pay a mana of silver to the family of the murdered man.* Very similar law to the foregoing

* Sections 22, 23, and 24 of Hammurabi's Code run thus : (§ 22) "If a man has committed highway robbery and has been captured, he shall be put to death. (§ 23) If the robber has not been captured, the man robbed shall declare everything he has lost before the god. The city and the *rabianu*, in whose land and borders the robbery has been committed, shall fully restore everything he has lost. (§ 24) If life (has been taken), the city and *rabianu* shall weigh one mana of silver to his people."

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obtains in Palestine still, as the following illustrative incident will show.

Just off the track, through the forest of Carmel, which one pursues going to and from Nazareth and its port and English post-town Haifa, there was pointed out to me, more than once during the year (April 30, 1879, to May 1, 1880) I resided at Nazareth, a certain large tree under which, some years earlier, a young Englishman had been foully murdered. He was travelling alone and afoot, and in the middle of the morning sat down to rest and find shelter from the heat of the sun under the tree spoken of. The sight, probably, of his gold watch-chain excited the cupidity of certain men of Belial, who stole behind him while he slept, killed him with their bludgeons, and robbed him. This act of violence was, of course, speedily discovered and an outcry raised. But there was no little trouble to find and punish the criminals; the chief difficulty really being that the murderers were Mohammadans and the victim a Christian. But though a Christian he was also an Englishman, and the English Consul in Beyrout was firm in insisting that the doers of the ill deed should be brought to justice. Yet how could they be since they were unknown? The Turkish law has a generally effective way of finding out the criminals in such cases by a clause—customary if not statutory—which corresponds to the laws just quoted from Hammurabi's Code, and which says that the township within whose borders crime is committed shall be held responsible. In this case, both the villages nearest to the scene of the murder denied their responsibility. The distance of each from the spot was therefore measured, and the village really the nearer was called on to produce the wrong-doers. But the idea that the life of any

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Mohammadan should be forfeited for the life of a Christian was an idea which, in those days at least, could not be entertained by any Mohammadan community in Palestine. It was, consequently, declared to be impossible to find the culprits ; if, however, amends must be made, the township was prepared to pay a money fine. But the English demand that the law should be effective remained firm, and an English gunboat anchored off Beyrout. Then the village in question found the criminals.

It is thus seen that where local law has a strong hold the king's writ may operate best through that. Thus the Sultan of Turkey rules to-day, and thus, in some matters, Hammurabi exercised authority in Babylonia four thousand years ago. At that time, in spite of Hammurabi's imperial governance and his diligence as a ruler, local or township law must still have had much force, for, before he united them under his own sovereignty, Babylonia had long consisted of several states, each with its capital city, and the head (king, priest, or governor) of first one and then another had obtained leading jurisdiction in the land. It was an old rule, therefore—a rule, indeed, probably handed down from primitive ages—that each locality or settlement should be held responsible for good conduct within its borders.

**A TRANSLATION FROM THE BABYLONIAN OF SUCH
OF THE LAWS OF HAMMURABI'S CODE AS ARE
COMPARED BY PROFESSOR GRIMME (pp. 66-75,
above) WITH THE LAWS OF THE FIRST PART
OF "THE BOOK OF THE COVENANT" (Exod.
xxi.-xxii. 19).**

NOTE.—The laws are here given in the sequence in which they occur on Hammurabi's *stela*. The numbering of them is Prof. Schiel's, who estimated that the five erased columns, which followed next after § 65, contained 35 clauses. Now, the recently discovered tablet (see p. 103, above) seems to show that the sum of the clauses had "—5" for its unit (the signs for the hundreds and tens being broken off), if that were so, the right total would probably be 275 or 285; consequently the present numbering of the clauses after 100 would be incorrect.

§ 1

If a man * has accused another of having practised sorcery upon him and he has not established (the accusation), the accuser shall be put to death.

* The original word (*awilu* or *amelu*), thus rendered throughout this translation, usually means a member of the class of ordinary free men. See p. 31 of Prof. Grimme's treatise.

§ 2

If a man has charged witchcraft upon another and has not established it, he who is charged with witchcraft to the river god he shall go, and to the river god he shall be cast, and if the river god overwhelm him, his accuser shall take his house ; if the river god show that man to be innocent and save him, he who has charged him with witchcraft shall be put to death, (and) he who has cast himself to the river god shall take the house of his accuser.

§ 6

If a man has stolen (from) the treasury of the god (*i.e.* of his temple) or from the palace, that man shall be put to death, and he who has received from him the thing stolen shall be put to death.

§ 7

If a man has bought or has received on deposit silver or gold, bondman or bondwoman, ox or sheep or ass, or anything whatever, from the hand of a man's son or a man's servant without witnesses and bonds, that man (as) a thief shall be put to death.

§ 8

If a man has stolen ox or sheep or ass or pig or ship, if it is the god's [*i.e.* belongs to the temple], (or) if of the palace (belongs to the palace), he shall give (*i.e.* recompense) up to thirty-fold ; if (it is the property) of a

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freed-man,* he shall compensate up to ten-fold ; if the thief has not wherewith to pay, he shall be put to death.

§ 14 .

If a man has stolen the young son of another, he shall be put to death.

§ 21

If a man has broken into a house, before the breach they shall kill him and shall thrust him (into it).

§ 24

If a life [has been taken by brigands †] the city and Governor (*Rabianu*) one mana ‡ of silver shall pay to his [the missing person's] people.

§ 57

If a shepherd has caused the sheep to feed in herbage [that is, probably, in growing corn], with the owner of the field he has not agreed, and without (the consent of) the owner of the field the sheep have eaten the field, the owner of the field shall reap his (the shepherd's) field, (and) the shepherd who, without (the consent of) the owner of the field, has caused the sheep to eat the

* *Mārbanû*, or freed minister of the court. (The word is otherwise read *mushkinu*, which would mean a *poor* man of some sort.) See above, p. 31.

† Or, If a living person has been carried off ; the original is obscure. See above, p. 68, also p. 129.

‡ There was no money coined in those days, but payments were made in silver by weight, 1 mana = 60 shekels.

field shall, in addition, (for every) 10 GAN * (thus eaten) pay 20 GUR † of corn to the owner of the field.

§ 63

If (he ‡ has taken over) an unreclaimed field he shall perform the work of the field and (for each) 10 GAN (of land) he shall measure out 10 GUR of corn for a year.

§ 117

If debt has seized a man, and his wife, his son or his daughter, he has given for the money, or into subjection § he has given them, three years for the house of their purchaser or subjector they shall work, in the fourth year they shall be restored to freedom.||

§ 125

If a man has given anything of his in trust, and where he gave it, either by breaking-in or climbing over, anything of his, together with anything belonging to the

* 1 GAN (a Sumerian word, and, therefore, printed in capital letters) is estimated to equal 6.67 acres.

† 1 GUR = 300 QA, which, according to Prof. R. F. Harper, were equivalent to about 500 lbs. avoirdupois, or 8½ bushels (of wheat); a GUR would, therefore, be 20 quarters, 6½ bushels (of wheat). A QA is the equivalent of nearly 1 litre, or over 1½ pints liquid measure, or 2 lbs. 2 ozs. 15 drams nearly, avoirdupois weight.

‡ That is, as the preceding sections show, a man who has taken over land in order to cultivate it, but has neglected to do so.

§ I.e. whether he has sold them for the money to pay off his debt, or whether he has given them into slavery to work off the debt.

|| Lit. "the state of their independence shall be established."

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owner of the house,* has been lost, the owner of the house who has been slack shall make good anything which was given him on trust and is lost, the owner of the goods he shall compensate; and the owner of the house shall diligently search for everything lost, and shall take whatever is with the thief.

§ 195

If a son smites his father, they† shall cut off his fingers.

§ 196

If a man destroys the eye of a man's‡ son, they shall destroy his eye.

§ 197

If he breaks a man's bone, they shall break his bone.

§ 199

If he destroys the eye of a man's slave, or breaks the bones of a man's slave, he shall pay half of his (the slave's) price.

§ 200

If a man knocks out the teeth of a man, his equal, his teeth shall be knocked out.

* *I.e.* the householder. It was scarcely considered respectable in ancient Babylonia for a man not to be the owner of the house he lived in.

† *I.e.* the judicial authority.

‡ It will be remembered, as explained in the note on § 1, that by "man" the Code means not a gentleman or a slave, but an ordinary free man.

§ 206

If a man has smitten another man in a fight and wounded him, and that man swear "I did not smite him wittingly," he shall be answerable for the doctor.

§ 207

If from his blows the man dies, he shall swear,* and if he [the man killed] is the son of a (free) man, he shall pay half a mana of silver.

§ 209

If a man smites the daughter of another (free) man and causes her miscarriage, he shall pay for her miscarriage ten shekels of silver.

§ 211

If a man smites the daughter of a *mārbanū*† and causes her miscarriage, he shall pay five shekels of silver.

§ 213

If he smites the female servant of a (free) man and causes her miscarriage, he shall pay two shekels of silver.

* *I.e.* he shall take oath, as in the preceding section.

† Or *mushkinu*. See note on § 8 of this translation of these laws.

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§ 250

If an ox going along the street gores a man and causes his death, that case has no penalty.

§ 251

If the ox of a man which gores has had its failing as a gorer made known and he has not blunted its horns (and) his ox he has not put under restraint (and) that ox has gored and killed, he shall pay half a mana of silver.

§ 252

If (it has gored) the slave of a man, he * shall pay one-third of a mana of silver.

§ 263

If [a man] has lost an ox or a sheep which has been given [= lent] him (with) an ox like to the ox, a sheep like the sheep, he shall compensate the owner.

§ 266

If in a fold a visitation of the god has befallen, or a lion has killed, the shepherd shall come before the god and clear himself and the damage to the fold the owner of the fold shall meet.

* The owner of the ox.

§ 267

If the shepherd is neglectful and has caused a breach in the fold, the shepherd the injury from the breach which he has caused in the fold he shall make good in oxen and sheep, and shall give them to their owner.

§ 280

If a man in a foreign land has bought the male or female slave of another man,[and] when he has come back into his own land the owner of the male or female slave has recognized his slave, if those male and female slaves are children of the land, without money they shall be restored to freedom.

W. T. P.

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